

# Exhibit 2

John McElhone

December 2, 2011

1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

MARTIN TANKLEFF,

Plaintiff,

No. 09CV1207

-against-

(JS)(WDW)

THE COUNTY OF SUFFOLK, K. JAMES  
McCREADY, NORMAN REIN, CHARLES  
KOSCIUK, ROBERT DOYLE, JOHN  
MCELHONE, JOHN DOE POLICE  
OFFICERS #1-10, RICHARD DOE  
SUFFOLK COUNTY EMPLOYEES #1-10,

Defendants.

-----X

December 2, 2011  
10:26 a.m.

Deposition of JOHN McELHONE, taken by  
Plaintiff at the offices of Quadrino Schwartz,  
666 Old Country Road, Garden City, New York  
11530, before Anneliese R. Tursi, a Registered  
Professional Reporter and Notary Public within  
and for the State of New York.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

2

A P P E A R A N C E S

NEUFELD SCHECK & BRUSTIN, LLP

Attorneys for Plaintiff

99 Hudson Street

New York, New York 10013

BY: DEBI CORNWALL, ESQ.  
VANESSA BUCH, ESQ.  
212-965-9081  
debi@nsbcivilrights.com

-and-

QUADRINO SCHWARTZ

666 Old Country Road

Garden City, New York 11530

BY: AMY MARION, ESQ.  
516-745-0101  
bab@quadrinoschwartz.com



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

3

A P P E A R A N C E S

CHRISTINE MALAFI

SUFFOLK COUNTY ATTORNEY

Attorney for Defendants

H. Lee Dennison Building

5th Floor

100 Veterans Memorial Highway

Hauppauge, New York 11788

BY: RICHARD T. DUNNE, ESQ.,  
BRIAN BERGER, ESQ.,  
ASSISTANT COUNTY ATTORNEYS



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

4

J. McELHONE

(Plaintiff Exhibit 7, document  
reflecting resume of John McElhone  
marked for identification, as of  
this date.)

J O H N M c E L H O N E,

having been first duly sworn by the  
Notary Public (Anneliese R. Tursi), was  
examined and testified as follows:

EXAMINATION BY MS. CORNWALL:

Q. Good morning, sir.

A. Good morning.

Q. My name is Debi Cornwall. We met  
off the record and I'm here today representing  
the plaintiff in this case, Martin Tankleff,  
along with my colleague, Vanessa Buch and my  
colleague Amy Marion.

Have you had an opportunity to  
read the complaint in this case?

A. Yes, I reviewed it.

Q. You understand that you are one of  
several named defendants in the case?

A. I see that, but I was -- as  
reading through it I wasn't sure with the  
decision of Judge Seybert if I was still in it



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

5

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

or not, but --

Q. But you have had an opportunity to read the complaint?

A. Yes, I have.

Q. You handed me before we started this morning, a document that we have had marked as Exhibit 7. Do you see that?

A. Yes, ma'am.

Q. What is this?

A. We have a change of commissioners, deputy commissioners, and he asked everyone above the rank of captain to submit a resume.

And when I was discussing with Mr. Dunne a series of things that happened through the years with this case, it became clear to me that it probably would be helpful to give him, and even for my own recollection, to just know exactly where I was when certain things were transpiring. So I thought this might be helpful.

Q. I think this will be.

Just for clarification on the record, you said we had a change of commissioners. You spent your career as an



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

6

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

officer and ultimately as a chief in the  
Suffolk County Police Department?

A. That's correct.

Q. And does Exhibit 7 accurately  
reflect your assignment and promotion history  
at the department?

A. Yes, ma'am.

Q. There is some handwriting there at  
the bottom.

A. Yes.

Q. Is that your handwriting?

A. Yes, ma'am, it is.

Q. Have you ever sat for a civil  
deposition before?

A. I believe I have, yes.

Q. Has it been a little while?

A. Yes.

Q. You mentioned you have been  
retired for some time?

A. A little over five years now.

Q. Do you remember the date of your  
retirement?

A. July 7, 2006.

Q. So you understand at a deposition,



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

7

J. McELHONE

you are sworn as you are in court. From time to time your attorney may put objections on the record. As there is no judge here to rule on them, unless there is a claim of privilege which I don't anticipate, you can go ahead and answer the question and there will be a ruling on the objections at a later time.

A. Okay.

Q. First of all, please tell us about your education.

A. I'm a graduate of Hauppauge High School, 1966. It is on Exhibit 7. I have an Associate, Applied Science in Criminal Justice from Suffolk Community College.

I have a Bachelor of Arts degree in Social Science, Interdisciplinary Social Science degree from Stony Brook, SUNY Stony Brook, and a Master of Professional Studies in Labor Relations from Stony Brook University, also.

Q. Did you receive your Bachelor's degree after joining the course?

A. All of my education came nights and weekends after I became a police officer.

**ESQUIRE**

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)



John McElhone

December 2, 2011

8

1 J. McELHONE

2 Q. So your highest degree is a  
3 master's degree?

4 A. Yes.

5 Q. And that's a professional -- why  
6 did you pursue that degree?

7 A. I was interested in that area. As  
8 I moved up in management, it was more and more  
9 labor relations kind of things going on and  
10 Stony Brook offered it on a part-time basis.  
11 So it was something that was easy and I  
12 enjoyed it. I like pursuing things.

13 Q. Fair to say you thought that  
14 degree would be helpful to you to the extent  
15 you were in a management position in the  
16 Suffolk County Police Department?

17 A. Yes.

18 Q. And did you find it helpful?

19 A. Yes, I did.

20 Q. If you would, referring to your  
21 resume as necessary, walk us through the  
22 history of your progression as an officer  
23 through the ranks at the Suffolk County Police  
24 Department from the time that you graduated  
25 the academy, if you would.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

9

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

A. Okay, I was assigned originally in the Fourth Precinct in Hauppauge.

Q. And that was 1971?

A. May of 1971 when I graduated the academy and I was there for eight years. I walked the beat. I drove a scooter. I worked the front desk and drove a sector car ultimately until I was promoted to sergeant in March of 1979.

Q. Is sergeant the first available position above patrol officer, was it at that time in the Suffolk County Police Department?

A. Sergeant is a supervisory position and it is a statewide exam that you take. There are other -- detective is considered a promotion and that's something that doesn't require a statewide exam. I wasn't a detective as you can see.

Q. As between detective and sergeant, is one higher in rank?

A. Sergeant is higher than a detective.

Q. So did you become a sergeant before you became a detective?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

10

J. McELHONE

A. I was never a detective. I became a detective supervisor down the road, the next step.

Q. I interrupted our time line. Let's see if we can bring it out that way.

A. After serving for three years as a patrol sergeant in the Third Precinct in Bay Shore primarily, I was in charge of a squad of officers in patrolling the Brentwood, Central Islip area.

Q. And this was between '79 and '82?

A. That's correct.

Q. What was your next change of assignment or promotion?

A. Well, there is a monetary raise, slightly so some consider it a promotion, but it was actually an application not a statewide exam or anything like that where I applied, was interviewed and was assigned as a detective sergeant in April of '82 and assigned to the Second Squad Detectives where I was in charge of a team of detectives covering basically the Huntington area.

Q. As far as you were aware, what



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

11

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

were the criteria for becoming a detective sergeant as opposed to a sergeant which you had been?

A. A good supervisor basically, someone who can work a little more independently out of uniform and not be responding to radio calls to pursue investigations.

Q. At the time you became a detective sergeant, fair to say you had had no personal experience investigating crime as a detective?

A. Not as a detective, but as a police officer you also investigate crime, misdemeanor crimes, you know, hit and runs, anything vehicular. There is a certain, I guess you could call them minor investigations that were accomplished.

Q. Is it fair to say that what you brought to the role of detective sergeant from the time you were first assigned that post in 1982, was really your supervisory skills?

A. Yes, and recommended by the supervisor that I worked for for, by that time I had an 11-year career and a couple of



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

12

J. McELHONE

commendations, actually several commendations. There was an interview process where I imagine I impressed them that I could do the job.

Q. Had you investigated felonies personally as of the time you became a detective sergeant?

A. I supervised detectives and that was our sole mission was to investigate felonies. So as a team sergeant, my team, I would assign a detective to a felony investigation, and assist and supervise it along the way, yes.

Q. And you are referring to your time as a sergeant on the Third Precinct?

A. No, I'm talking about after I was promoted to detective sergeant.

Q. So let me clarify the question. Before you were promoted to detective sergeant, up to and including April 18th of 1982 when you were a patrol officer and then a sergeant in the Fourth Precinct and then the Third Precinct, did you personally investigate felonies?

A. No.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

13

J. McELHONE

Q. So you began as a detective sergeant in the second squad?

A. That's correct.

Q. And you were supervising the detectives there?

A. Yes.

Q. And they were obviously investigating serious felonies?

A. Yes.

Q. Did that include homicides?

A. No.

Q. There was a separate homicide squad tasked with investigating those crimes?

A. Yes, that's right.

Q. What was your next promotion or change of assignments, sir?

A. I was transferred back to the Third Squad back to Bay Shore where I was more familiar with the officers and the territory, you might say, and I stayed there for two years and until I was promoted to lieutenant.

Again, lieutenant was a statewide exam and I had scored high enough to be promoted to lieutenant and I was back into the



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

14

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

uniform division of the Second Precinct.

Q. You started as a lieutenant in February of 1984?

A. That's correct.

Q. Well, obviously, lieutenant is a promotion over sergeant?

A. Yes.

Q. Did you have at the Second Precinct in your capacity as a lieutenant, a day-to-day involvement in the investigations that your subordinates were running?

A. Well, my subordinates at that time would have been four or five sergeants and a platoon of approximately 40 police officers.

Q. And again, these were --

A. This is more uniform patrol. It was answering 911 calls, patrolling sectors, traffic and anything like that that would come in.

Q. And going back for a moment to your two-years as detective sergeant supervising detectives in the second squad and Third Squad, could you agree that you had daily involvement in their felony



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

15

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

investigations in your capacity as a supervisor?

A. No. It is a division between the uniform side, and the detective side and as a uniform lieutenant I was in charge of the uniform officers assigned on that particular shift.

Q. And that's when you were a lieutenant between 1984 and 1986 in the Second Precinct and the Third Precinct?

A. That's correct.

Q. Taking a step back earlier in time to the period of time between 1982 and 1984 when you were a detective sergeant supervising detectives in the second squad and then the Third Squad, during that period of time would it be fair to say that you had day-to-day involvement in the investigative work your detectives were doing?

A. Absolutely.

Q. So what was your next promotion after lieutenant in 1986?

A. Again, I applied to become a detective lieutenant and a decision that is



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)



John McElhone

December 2, 2011

16

J. McELHONE

made upon the recommendations of your current supervisors and in an interview process and in this time I had two years of experience as a detective sergeant and a track record, if you will, from that and I was promoted to detective lieutenant in charge of Fifth Squad detectives which is primarily Patchogue area, Town of Brookhaven, south side of the Town of Brookhaven.

Q. Again, in this capacity now as the CO of a detective squad, were you personally involved in the felony investigations those detectives were running?

A. It wasn't as close on as it would be as a sergeant. I was in charge of the entire squad. I was commanding officer. I had three detective sergeants -- actually four. I had a day sergeant also when I was assigned there. And approximately 22 detectives.

Q. Could you describe for us as lay people, the difference between what your job looked like as a sergeant of detectives versus what your responsibilities were once you



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

17

1 J. McELHONE  
2 became lieutenant or lieutenant CO responsible  
3 for detectives?

4 A. The first thing is my hours  
5 changed. I would be Monday to Friday, 9 to 5  
6 on call nights and weekends. The sergeants  
7 are assigned to a team that rotates around the  
8 clock, either 9 to 5 or 5 to 1. At that time  
9 it was four days on, two days off. So there  
10 was more of around the clock you would be  
11 there on the scene.

12 If something happened at 9 o'clock  
13 at night, as a detective sergeant you and your  
14 detectives would go out, if it was a major  
15 case, you and your detectives would go out and  
16 you would be hands-on supervising that  
17 particular felony.

18 As the CO you might read about it  
19 the next morning. If it was serious enough,  
20 you might get called at home and if it is  
21 really serious enough, you might respond also,  
22 but it wasn't -- as the oversight wasn't as  
23 intense or as scrupulous as you would be with  
24 a sergeant hands-on right there.

25 Q. That's helpful. Thank you.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

18

1 J. McELHONE

2 And just to clarify, when you say  
3 less scrupulous I just want to make sure I  
4 understand what you mean by that.

5 Obviously, as the CO of a squad,  
6 it is your ultimate responsibility to  
7 supervise the case work of your detectives?

8 A. Yes.

9 Q. And you would be careful and  
10 scrupulous in doing that work?

11 A. I would be, yes.

12 Q. But you were not as involved in  
13 every decisions made by your detectives than  
14 you would have been as a sergeant?

15 A. Yes, the minutia or certain  
16 details that you might not be totally aware of  
17 if they are innocuous enough that they  
18 wouldn't come to your attention.

19 Q. And is that what you mean by less  
20 scrupulous --

21 A. Yes.

22 Q. -- you weren't as involved in the  
23 minutia?

24 A. That was probably a bad choice of  
25 words. It could be, you know



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

19

J. McELHONE

Q. Because you were a very careful supervisor?

A. Absolutely.

Q. And you took your responsibilities seriously?

A. Absolutely.

Q. And you were vigilant in insuring that those under your command complied with the written policies of the department?

A. Yes.

Q. And were you always equally as vigilant to make sure that those under your command complied with the constitutional rights of suspects?

A. Absolutely.

Q. Did you understand that that was part of your role as CO of a division?

A. That's correct.

Q. Both insuring that detectives complied with written policies and that they scrupulously observed the constitutional rights of suspects?

A. That's correct.

Q. So we discussed briefly your



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

20

J. McELHONE

posting as a detective lieutenant as the CO in the Fifth Squad. What came next for you?

A. Actually, I got a call from the chief of detectives some time in February of '87 and he told me that they were going to make a change in the homicide squad, would I consider taking over as the CO of homicide squad.

Q. Who was the chief of the detectives at that time?

A. Arthur Feldman.

Q. Did you know him at that time?

A. Well, I knew, sure, he was my boss.

Q. Tell me what you remember of that phone call?

A. I was in shock, totally. Of course the answer was yes right away. It is like the ultimate job for a detective lieutenant or a detective for that matter.

Q. Homicide is the best of the best?

A. Absolutely.

Q. It the most elite department or squad within that accident?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

21

1 J. McELHONE

2 A. You might say that.

3 Q. Well, you would say that, wouldn't  
4 you?

5 A. Well, there were other people who  
6 were well qualified but didn't really want to  
7 go there. But most everybody did want to go  
8 there and I was shocked and I immediately said  
9 yes.

10 Q. Fair to say you considered it a  
11 significant promotion?

12 A. Yes.

13 Q. And you were proud to be offered  
14 the post?

15 A. It wasn't really a promotion. It  
16 was a transfer, but it was a high visibility  
17 post and the ultimate investigation.

18 Q. Did he tell you in that phone call  
19 or in any conversations you had with him  
20 thereafter, why at that time they were making  
21 a change in personnel at the top of homicide?

22 A. No, he didn't.

23 Q. Did he tell you why they had  
24 chosen you?

25 A. He didn't.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

22

J. McELHONE

Q. Did he tell you why the outgoing CO was being transferred?

A. He didn't.

Q. Who was the outgoing CO who you replaced?

A. It was Lieutenant Dave Scanlon who was really only briefly assigned there.

Q. Did you ever speak to him about his experience as the CO of homicide?

A. We talked briefly, but it was, you know, he was a person who had been a detective lieutenant in the general service squad for many, many years and I think they brought him in to bring in some stability while the SIC investigation was going on.

There was a lot of turmoil in the office and as a matter of fact, the department assigned a deputy inspector which is unusual to be in charge of the homicide squad for a brief period and he brought in Lieutenant Scanlon.

Q. I just want to make sure I understand the role of the deputy inspector in overseeing homicide.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

23

J. McELHONE

First of all, when was that person brought in?

A. I believe shortly before I was brought in.

Q. After Scanlon or before Scanlon?

A. I think with Scanlon they put a deputy inspector and then he brought in a lieutenant to do more of the day-to-day things. But for a while there was a bit of a turmoil there with the investigation that was going on. The deputy inspector was more direct in oversight.

When I came in he backed off, he was more of a bureau chief of the major crime bureau and he would oversee myself in homicide, who ever was in narcotics, the arson squad. He would have more of a role with the major crime COs.

Q. Who was this deputy inspector?

A. Tom Murphy, Thomas Murphy.

MS. CORNWALL: No. 8.

(Plaintiff Exhibit 8,  
organizational chart marked for  
identification, as of this date.)



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

24

1 J. McELHONE

2 Q. Mr. McElhone, I'm giving you what  
3 we have marked as Exhibit 8 and I'm going to  
4 give you a highlighter because I just want to  
5 make sure that I understand the chain of  
6 command as you are talking about the various  
7 departments and the relationship between  
8 different divisions.

9 A. Okay.

10 Q. Do you recognize generally the  
11 form of this organizational chart?

12 A. Yes.

13 Q. And this is the organization of  
14 the Suffolk County Police Department as it  
15 existed in January of '87?

16 A. Um-hum.

17 Q. For the record, that's a yes?

18 A. Yes.

19 Q. And that's just a month or so  
20 before you took command of homicide?

21 A. That's correct.

22 Q. So would you find and highlight  
23 for me the homicide section. It is on the  
24 lower left there.

25 A. I have it.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

25

1 J. McELHONE

2 Q. And that was your command?

3 A. That's right.

4 Q. Who was your boss while you were  
5 the CO of homicide?

6 A. The major crimes bureau at the  
7 time had a Detective Captain Will Ports and a  
8 Deputy Inspector Thomas Murphy.

9 Q. And what, generally speaking, was  
10 the role of a deputy inspector?

11 A. He was the liaison, if you will,  
12 between my unit and the chief of detectives.

13 Q. What did the chief of detectives  
14 do?

15 A. He had overall command of the  
16 entire detective division for the County of  
17 Suffolk.

18 Q. So he was who at this time?

19 A. Arthur Feldman.

20 Q. And would you highlight that  
21 office as well.

22 A. Okay.

23 Q. So the chain of command, if I  
24 understand correctly, was you as the CO of  
25 homicide up to Tom Ports as the head of major



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

crimes?

A. Will Ports.

Q. I'm sorry, Will Ports. Along with Thomas Murphy who was the deputy inspector there?

A. He was Willard Ports. There was a commanding officer of major crimes which was Tom Murphy and executive officer of major crimes who was Will Ports. His real name was Willard but he didn't like anybody to call him that.

Q. We can all understand that.

And then his boss was Mr. Feldman, the chief of detectives?

A. There was also a deputy chief detectives which was Richard Roberts, too. So there was a chain of command all the way up.

Q. And above that, who would be next?

A. There is a chief of department or chief inspector they called it in 1987.

Q. And would you highlight that for me.

A. Okay. That is where the chief of detectives would report to him.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. And who was the head of that office of the chief inspector at this time?

A. I had worked for Joseph Monteith for so many years. I always thought he was there, but it was somebody before him.

I will have to get back to you on that.

(INSERT: ) \_\_\_\_\_

Q. Sure. And then --

MR. DUNNE: You want to leave a space there?

MS. CORNWALL: Sure. We will just mark that and see if we can fill that in later.

MR. DUNNE: Sure.

MS. CORNWALL: Thank you, good suggestion.

Q. Next up from there is the commissioner?

A. That's right.

Q. Who was the commissioner as of January '87?

A. Treder.

Q. Had he been in that post for some



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

28

1 J. McELHONE

2 years?

3 A. A couple of years before that,  
4 yeah.

5 Q. How long did he stay on?

6 A. He had left sometime in 1987. Jim  
7 Caples became commissioner and then Dan Guido.  
8 And all of that happened while I was in the  
9 homicide squad I believe.

10 Q. Was that all, as far as you  
11 understood, in connection with the turmoil  
12 engendered by the SIC?

13 A. I couldn't say. There was an  
14 election, also. He is appointed.  
15 Commissioner Guido is appointed by the  
16 incoming county executive, Halpin at the time.

17 Q. As the CO of homicide division,  
18 and we will get back to the rest of your  
19 career in just a moment, make sure we  
20 understand that, but as the CO homicide, was  
21 it part of your responsibility to know and  
22 understand the policies with regard to  
23 homicide investigation?

24 A. Yes.

25 Q. Was the head of major crimes, Mr.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

29

1 J. McELHONE

2 Ports or Mr. Murphy, did either of those men  
3 have any personal responsibility for  
4 overseeing the work of homicide detectives?

5 A. As I mentioned earlier, for a  
6 brief time Deputy Inspector Murphy was put  
7 directly in charge of the homicide squad.

8 Q. And that predated your tenure as  
9 CO?

10 A. Yes, that's correct.

11 Q. So after you took over as CO, is  
12 it fair to say that the buck stopped with you  
13 when it came to overseeing the work of your  
14 homicide detectives?

15 A. I was the commanding officer,  
16 yeah, I was in charge.

17 Q. Did you have any role in drafting  
18 or implementing policies that your homicide  
19 detectives were to be carrying out?

20 A. Yes, initially I did.

21 Q. We will discuss that a little bit  
22 more later on this morning.

23 A. Okay.

24 Q. Did the heads of major crimes have  
25 any role in changing or implementing homicide



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

30

1 J. McELHONE

2 investigation policies?

3 A. We'd discuss it and we would be in  
4 agreement or I would be in agreement. We  
5 would agree on the way we would go.

6 Q. Did you have ultimate authority in  
7 that regard or did you need a supervisor to  
8 sign-off?

9 A. I had to get the approval of, I  
10 don't know if it was officially a sign-off but  
11 I certainly kept them abreast of what we were  
12 thinking of doing or what we thought would be  
13 wise to do and we would either agree or  
14 disagree.

15 Q. As a good supervisor, you kept the  
16 lines of communication open both up the chain  
17 and down the chain?

18 A. Oh, absolutely. That was a major  
19 part of the role.

20 Q. Did you ever propose any changes  
21 to policy that were disapproved by anyone  
22 above you in the chain of command?

23 A. Not that I can recall.

24 Q. Fair to say you kept them abreast  
25 and wanted their buy in, but ultimately you



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

31

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

made the call?

A. Yeah, if they agreed, then we would implement it, yes, absolutely.

Q. And again, you can't think of an instance in which they disagreed with your recommendation?

A. No, I remember having discussions at one point -- in the past homicide squad used to be in charge of fatal accidents and the numbers were increasing dramatically.

They decided, wisely I thought, to put it into general service in the various precinct squads. And at one point there was a push to bring it back into the homicide squad and I resisted and they went along with my suggestion at that point.

Q. And was part of the reason you resisted, case load?

A. Absolutely.

Q. Was another part of the reason you resisted is that there are different considerations in fatal accidents, did you say, fatal car crashes?

A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

32

J. McELHONE

Q. Than in murders?

A. Yes.

Q. Different investigative techniques are brought to bear on those different kinds of cases?

A. Yes.

Q. Different kinds of expertise?

A. The case load primarily.

The expertise wasn't beyond the capability of our detectives, but the case load would have been overwhelming. I would rather concentrate on what we had to do with homicides, suicides, unexplained deaths.

Q. How many open homicide cases did your department have during your tenure in any given year?

A. Well, a homicide case is open forever. There is no statute of limitations. So we had cases going back to the late sixties that were still in our office and that if a new lead came in or a new avenue of investigation opened up, we would pursue it. There were a couple of cases that we brought in years after the case had first come in.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

33

J. McELHONE

Q. Was there any provision for a cold case unit, anything like that at the time?

A. As a matter of fact when I had a change of sergeants in the homicide bureau, Sergeant Robert Doyle came in rather than being a day sergeant which was more administrative, taking care of overtime and things like that, I put him in charge of cold cases. We called it the extended investigation team and he would review them, and if there was one that looked like it was an avenue or something that was unexplored, we would go through with that, follow through and investigate it.

Q. So leaving aside the older cold cases, how many active and open homicide cases was your department dealing with in 1987, 1988?

A. I don't have the exact number.

Q. Can you give me an estimate based on your experience. Was it more than ten in a given year?

A. I would say it is more than ten.

Q. Was it more than 20 in a given



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

34

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

year?

A. Again, I don't know exactly what you are talking about. I came in in '87. There were 86 cases that were still going to trial. There were 86 cases, 85 cases. We were reinvestigating or trying the Pius case which went back to 1979.

It is fluid. There is not really a number I can put on it.

Q. Did the department have a mechanism for tracking homicides that had been reported in which there was not yet an arrest or a conviction?

A. If it was recent within a couple of years, usually the lead detective was still there so we had a list of open cases, absolutely.

Q. And was there some central location where that list was kept?

And the reason why I'm asking is I'm thinking ahead to whether there is a piece of paper that would help us answer this question if we looked in the right place.

A. There was an open cases list. It



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

35

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

was kept in homicide but I believe a copy was made available to the CO of the major crimes bureau.

^ MS. CORNWALL: So just for the record, I haven't seen it in the discovery.

MR. DUNNE: I didn't see that either. That's the first time I'm hearing it. Just one -- you are not talking about the cards?

THE WITNESS: No, no. There was a report, I don't know if it was annually or twice a year that we would generate.

MR. DUNNE: Would I be accurate to call it an annual open case list?

THE WITNESS: Open case list.

MR. DUNNE: I will do a search for that.

MS. CORNWALL: Thank you.

A. The reason for that, occasionally you would get a call from another jurisdiction and say somebody says they know something about a stabbing in Huntington, and we would look at our open cases and, oh, we got one



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

36

J. McELHONE

from a few years ago, go to the file, pull out the case and when we got back to whoever was supplying the information, sometimes it was a member of the public calling and saying I know something about a stabbing in Huntington, for an example, and you would first look in the open case list and say, oh, yeah, had one five, six years ago like that, the detective may be retired or may be there and then we would put him in touch with the person with the information on it.

^ MS. CORNWALL: So, Rich, we would just formally be asking for that list for '84 through '89.

MR. DUNNE: Sure. I will take a look for that.

THE WITNESS: Call Jerry at the squad.

MR. DUNNE: Yes.

Q. Let's turn back to Exhibit 7, your resume.

So how long were you the CO of the homicide section?

A. Two years.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

37

J. McELHONE

Q. What was your next promotion or change of rank?

A. Actually captain is again a statewide exam. I scored high enough to be made captain but they wanted to keep me in homicide for another little while so I was a detective captain for a month and stayed in homicide. So just about two years, make it around two years I was there.

Q. You made captain in January '89?

A. Yes.

Q. And completed your two year stint in homicide in February 18, 1989?

A. That's right.

Q. And what was your next --

A. After captain there is no longer a statewide exam, a list, if you will, a civil service list. There was a lot of people retiring and there was an opening in the Second Precinct for deputy inspector which was the executive officer, No. 2 in command of that precinct.

Q. You say there were a lot of people retiring in early 1989?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

38

1 J. McELHONE

2 A. Yes, Commissioner Guido had come  
3 in somewhere in '88 and why I remember that  
4 directly is usually they make four or five  
5 captains off the list, and I was like 15 or 16  
6 or something, and they got to me and passed  
7 me. So there was a lot of captains and above  
8 had retired I think with the new commissioner  
9 coming in, and, you know, maybe they didn't  
10 feel like they were going to be part of the  
11 team or whatever.

12 Q. Fair to say you had a similar  
13 experience when you took over at homicide,  
14 there was a great deal of turnover within that  
15 department during your tenure there or before  
16 your tenure there?

17 A. Yes.

18 Q. In fact, it was almost a mass  
19 exodus of detectives out of that unit in  
20 connection with the turmoil that was going on  
21 in the mid '80s?

22 A. That might be too strong a word,  
23 but there was a lot of people retiring or  
24 moving to other commands.

25 Q. We'll get back to that as well.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

39

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

So you became a deputy inspector  
of the Second Precinct.

A. Yes.

Q. And what were your  
responsibilities there?

A. I was the second in command of the  
entire precinct of the patrol division  
primarily.

Q. More of an administrative  
position?

A. Yes.

Q. And your next transfer or change  
of post?

A. I came back to major crimes bureau  
in the detective division, as you can see  
oversight over homicide, narcotics, everybody  
that would be in the major crimes section.  
I'm not quite sure that when I came back -- I  
am quite sure that narcotics was not under my  
purview. They had their own -- the  
organizational chart might have changed. I  
don't know if you have that back here.

Q. For the record, Exhibit 8 does  
have a second page and a third page.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

40

J. McELHONE

Do you recognize the second page as the chart as of September 21st of '87 there at the bottom?

A. Okay.

Q. And the third page has been represented to us as the chart as of May 31st of 1988.

A. All right.

Q. These are the three charts we have been provided for this time period.

A. Okay.

A. In '89, November of '89 to the end of the year in '89 I was the executive officer in the major crimes bureau. The commanding officer major crimes bureau was Arthur Houde, H-O-U-D-E. He was a full inspector.

Q. And what was your next posting after that?

A. Basically, I was still on the chief of detectives office but now my, I was in charge of or I was the number two man in command of the detectives in the various precincts, the general service bureau they called it at that time.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

41

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. And after that in 1991?

A. I was the commanding officer of the Third Precinct in Bay Shore.

Q. For how long?

A. A little over a year.

Q. And then?

A. Then I was made deputy chief of detectives, a post I had for five years.

Q. And that is within the chief of detectives office?

A. Yes.

Q. On the sort of the middle of the page highlighted on the left of the first page of Exhibit 8 on the top there you highlighted?

A. Yes.

Q. And how long were you there?

A. Five years.

Q. And thereafter?

A. I was the assistant chief in patrol which is a promotion and I was there I guess almost six years, yeah, six years, I was the number two man in command of all of the uniform forces in the police department.

Q. And your next change of assignment



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

42

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

after your five years as chief of patrol?

A. In March Commissioner Dormer was assigned. He was promoted to chief of patrol, chief of all the uniform services in the police department. In October of that year he moved me over to support services.

Q. Can you just indicate where support services is on this?

A. On the '87 chart it would be headquarters, but they changed the name to support services.

And then I retired in July of '06.

Q. Thank you very much.

Is it fair to say, Mr. McElhone, that although you personally did not investigate felonies on the ground as a detective, during the course of your career supervising detectives, you became very familiar with investigative techniques?

A. Yes.

Q. Investigative policy?

A. Yes.

Q. Constitutional rights of suspects?

A. Absolutely.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

43

J. McELHONE

Q. Would you agree that that was part of your role to know those things in order to effectively supervise detectives under your command?

A. Yes.

Q. And specifically within the homicide unit?

A. That's correct.

Q. I would like to talk to you now about what some of those generally accepted investigative practices were back in 1988. All right?

A. Okay.

Q. Would you agree that a fundamental goal of homicide investigation or any felony investigation is to uncover reliable evidence?

A. Yes.

Q. And that was true in 1988?

A. Absolutely.

Q. Would you agree that an officer should always be assessing the reliability of information and evidence that comes to his attention?

A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

44

1 J. McELHONE

2 Q. That was part of the detective's  
3 job in 1988, wasn't it?

4 A. Yes.

5 Q. Was it also a fundamental part of  
6 the job in 1988, as now, to seek out  
7 corroboration?

8 A. Yes. If it is available, you  
9 would also look for that.

10 Q. And for the record, what is  
11 corroboration?

12 A. Physical evidence or another  
13 witness who will support what one person would  
14 say, what another witness would say or what a  
15 theory might be.

16 Q. Fair to say a detective's job was  
17 to seek out objective evidence?

18 A. Yes.

19 Q. See if there was forensic  
20 evidence?

21 A. Yes.

22 Q. Even in 1988?

23 A. Oh, absolutely.

24 Q. And look for corroboration in the  
25 form of objective evidence, forensic evidence



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

45

1 J. McELHONE

2 or physical evidence?

3 A. Yes, if it is available.

4 Q. Would you agree that it was very  
5 important in 1988 as it would be now, for  
6 detectives to keep an open mind during an  
7 investigation?

8 A. Yes.

9 Q. To follow all investigative leads?

10 A. Yes.

11 Q. To remain objective at all times?

12 A. Yes.

13 Q. And was it part of your role as a  
14 supervisor to insure that those under your  
15 command followed those generally accepted  
16 practices?

17 A. Yes. Again, not day to day, hour  
18 to hour, but as commanding officer, yes, it  
19 would be something I would definitely be  
20 concerned with.

21 Q. Was it also part of the duty of a  
22 detective and supervisory officer that if it  
23 came about after an arrest, new evidence  
24 emerged calling into question whether that  
25 arrest was of a guilty person or not --



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

46

1 J. McELHONE

2 withdrawn. Let me start over again.

3 In the event that an arrest was  
4 made and additional evidence came to light  
5 after that arrest that raised a question about  
6 whether the guilty person had been arrested,  
7 did officers have an obligation to follow that  
8 new evidence objectively and fairly, wherever  
9 it might lead?

10 A. If it was bona fide new evidence,  
11 it would be explored, absolutely.

12 Q. Even after an arrest?

13 A. Yes.

14 Q. And that was clear to you in 1988?

15 A. Yes.

16 Q. That was part of a detective's  
17 role?

18 A. Yes.

19 Q. And part of your role as a  
20 supervisor in a homicide division was to make  
21 sure that those leads were followed?

22 A. Detective would come to his  
23 supervisor, explain to him what new avenue had  
24 come to his attention and then that decision  
25 would be made, okay, let's explore that or



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

47

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

meet with them or examine the veracity of the person or the evidence that's being offered.

Q. And the new evidence or new lead should be followed after an arrest even if it might show the detective had engaged in misconduct?

A. It would be explored, not by that detective, by a supervisor or internal affairs or somebody like that.

Q. And other leads inconsistent with an arrest had to be followed even if they might prove embarrassing to the department, right?

A. Yes.

Q. Even if it might prove embarrassing to the DA's office?

A. Yes.

Q. Even if it might reflect poorly on your own supervision?

A. Yes.

Q. That was just part of the job?

A. Again, if it is a bona fide area that has to be explored, it would be explored, no question.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

48

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. Following a lead wherever it leads you?

A. Exactly.

Q. Even if following a new lead could result in civil liability to the department, it was still the detective and supervisor's role to see it through?

A. Again, at that point you would not have the detective investigating that. That would be something that someone of a higher rank, probably internal affairs or a boss, a very high level would be looking at.

Q. And what was the reason why, if new information emerged casting doubt on a detective's conduct, you would assign that lead to someone other than that detective?

A. Yes.

Q. What was the thinking behind that?

A. Well, he couldn't be objective if he is looking at something that would cause him or potentially cause him embarrassment or a problem down the line.

Q. If he is looking out for himself instead of the case?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

49

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

A. Again that would be something that even the minute it came in, it would be referred immediately to a supervisor and then a decision would be made who would follow-up on that.

Q. And one of the most important things for a homicide detective was to remain objective?

A. Yeah, any investigator.

Q. Now I'm going to ask you some questions about documentation. Again, back in 1988.

It was understood by officers within the homicide unit in 1988 that accurate documentation was critically important?

A. Absolutely.

Q. It could refresh an officer's memory later on when there was often a gap in time between the investigation and the time they might be asked to testify?

A. Yes.

Q. So in that connection, note-taking was the very foundation of a good investigation, wasn't it?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

50

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

A. That's correct.

Q. And an investigator who keeps accurate, comprehensive and chronological notes will not only properly coordinate his investigation, but will structure the strongest case possible for presentation in court. That was true, right?

A. Yes.

Q. Why are accurate, contemporaneous notes important?

A. As you just mentioned, it is something that you will have to refresh your recollection later down the line if this investigation is extended, if a detective is retired or resigned somewhere, someone can pick up the case and know exactly what was done, what hasn't been done and it would be something that would be, give you a road map, if you will, to where we have been and where we are going.

Q. Was there any written policy or requirement in place under your command in 1988 in the homicide unit that detectives take notes?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

51

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

A. From the day I was assigned in '87 it was clear to them that there would be notes taken on every investigation, that they remain a part of the case and it would be something that with the supervisor would be looking for in each and every instance.

Q. When you say remain part of the case, you mean those notes had to be retained?

A. Yes, absolutely.

Q. And included in a case file?

A. Yes.

Q. And when you say from the time you took command it was made known to them, you made it clear, didn't you?

A. Absolutely.

Q. Because you understood how important notes were?

A. Yes.

Q. And accurate documentation?

A. Yes.

Q. And retaining documentation in a case file?

A. That's correct.

Q. Likewise, police reports



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

52

1 J. McELHONE

2 themselves had to be accurate?

3 A. Yes.

4 Q. Had to be thorough?

5 A. Yes.

6 Q. Had to be complete?

7 A. Yes.

8 Q. And had to accurately reflect what  
9 had happened as reflected in the note, right?

10 A. Correct.

11 Q. And of course you made sure  
12 officers under your command understood those  
13 facts?

14 A. Yes.

15 Q. And what was expected of them?

16 A. Yes.

17 Q. Were there written policies in  
18 effect with regard to the accuracy and  
19 retention of police reports under your  
20 command?

21 A. I don't recall if I wrote any of  
22 them, but it was clear from our rules and  
23 procedures and from, we provided training very  
24 early in '87 we had a seminar provided by a  
25 man named Vernon Geberth, a retired member of



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

53

J. McELHONE

the NYPD wrote several volumes on homicide investigation. And we had a one-week presentation attended by everyone in the command, and also most of the DAs, if not all of the DAs in the homicide bureau. And clearly we hit that about five different times about note-taking and other scene considerations that you had to be taking.

Q. Is it fair to say that prior to your taking command, there had been some serious questions raised about whether homicide detectives were taking adequate or accurate records?

A. Yes.

Q. And did you see it as part of your role to make a change in that regard?

A. Absolutely.

Q. Was it understood by homicide detectives under your command that it was critically important for them to accurately convey to prosecutors information that they gathered, whether it was helpful to a prosecution or helpful to a suspect?

A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

54

J. McELHONE

Q. In particular, were officers aware of the Brady v. Maryland case giving suspects a constitutional right of access to information that might help their defense?

A. I didn't know they worded it that way, but I know what you are talking about, Brady cases, exculpatory information. And definitely all of that was made available to the DAs that would be assigned to the case.

Q. As a matter of policy, Brady material was turned over by the police?

A. That is throughout the police department not just homicide squad.

Q. Is it part of your obligation as CO of homicide to make sure that officers fulfilled their Brady obligations?

A. Yes.

Q. And that they understood them?

A. Yes.

Q. So it was understood not only by homicide detectives but throughout the department in 1988 that any information, whether oral or written, that came to an officer's attention that was helpful to a



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

55

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

criminal defendant, had to be disclosed to a prosecutor.

A. That was becoming very, very acutely aware.

Q. And you made sure of it?

A. Yes.

Q. With regard to questioning suspects also, would you agree that it was still critically important to constantly be assessing the reliability of information that came out during an interrogation?

A. I don't understand your question.

Q. It was a bad question. Let me ask it again.

We talked earlier about how important it was for homicide officers and any officer investigating a felony to be assessing the reliability of information?

A. Yes.

Q. Did that apply equally to information that came out during an interrogation?

A. Yes.

Q. Was it equally as important in an



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)



John McElhone

December 2, 2011

56

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

interrogation for an officer to keep an open mind?

A. Yes.

Q. Particularly during an interrogation, was it important for officers to listen to everything said with an objective mind and not to jump to conclusions before all the facts were in?

A. That would be very important.

Q. The goal in an interrogation, was it not, was to elicit a reliable confession, right?

A. That's correct.

Q. Were you aware of the phenomenon of false confessions as a general matter in 1988?

A. I have heard of it, yes.

Q. So you were aware when you assumed command of the homicide unit that sometimes innocent people can confess to crimes they didn't commit?

A. I've heard that happening, yeah.

Q. And you have heard of that happening as a general matter as of the time



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

57

1 J. McELHONE

2 you took command in 1988?

3 A. Yes.

4 Q. You knew it was something to watch  
5 out for?

6 A. Yes.

7 Q. Did you also understand in 1988  
8 that there were certain kinds of suspects who  
9 had to be treated with special care in an  
10 interrogation?

11 A. Juveniles who had their own set of  
12 rules, if that's what you are talking about.  
13 Each one is individually different and a good  
14 detective would understand that. Approaches  
15 would change bearing on who you were  
16 interrogating.

17 Q. But certainly juveniles needed to  
18 be treated with super care?

19 A. Yes.

20 Q. And you and your detectives  
21 understood that?

22 A. Throughout the department. If a  
23 uniform cop knows if someone is under 16, they  
24 go to the juvenile room. The parents have to  
25 be called.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

58

J. McELHONE

Q. Would you agree that the goal of interrogation is to learn what the suspect knows?

A. Yes.

Q. In that connection isn't it true that the Suffolk County Police Department as with most departments across the country by 1988, made it a practice of holding back certain details about a crime from the press and the public when reporting a homicide?

A. Yes.

Q. And the reason for doing that was, in part, to be able to assess the information that a suspect provides in interrogation, right?

A. That's correct.

Q. Was it understood in 1988 by you and your officers in the homicide department that it was critically important during an interrogation to use open-ended questions?

A. At times. There are other times you might, as you are closing in on interrogation, that you will more directly confront someone.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

59

1 J. McELHONE

2 Q. Leaving aside confronting someone  
3 with guilt, let me be a little bit more  
4 specific.

5 Was it understood by you and the  
6 detectives under your command in 1988 that it  
7 was critically important for a detective never  
8 to supply information about the crime to a  
9 suspect that the suspect has not already told  
10 you about?

11 A. Never is a very strong word.  
12 There might be something you would do, but if  
13 it is all you had, you would want to hold it  
14 back.

15 Q. Because you want the suspect to  
16 offer you guilty knowledge?

17 A. Yes.

18 Q. And if a police officer transmits  
19 those nonpublic details in the phrasing of the  
20 question, you can't assess whether that is  
21 guilty knowledge or not when the suspect gives  
22 it back to you?

23 A. That's correct.

24 Q. And that's one of the most  
25 important ways to assess the reliability of a



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

60

1 J. McELHONE

2 confession, right?

3 A. If they express something that  
4 only you know and he knew, the murderer would  
5 know, yes, that would be very important.

6 Q. As a result, was it understood by  
7 you and the detectives under your command in  
8 1988 that, as important as it was not to feed  
9 or leak nonpublic information to the suspect  
10 in the way you are asking the question, it was  
11 equally important to accurately document how a  
12 confession was elicited?

13 A. Yes.

14 Q. So, for example, if an officer did  
15 provide nonpublic information to a suspect in  
16 the form of the question, that should be  
17 documented for those who are going to be  
18 assessing the reliability of the confession  
19 later on?

20 A. I would agree with that, but I  
21 don't know what you are talking about  
22 document. You wouldn't interrupt the flow  
23 that you have going in conversation if you  
24 will with a suspect to write everything down,  
25 but immediately right afterwards or if there



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

61

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

is a second person involved, they would note that.

Q. Would you agree that a confession in which a suspect provides nonpublic information about a crime in response to an open-ended question is much more reliable evidence of guilt than a confession in which police gave the suspect nonpublic facts in the phrasing of the question?

A. I would agree with that.

Q. Because if the police feed or leak information of a nonpublic nature, you just don't know whether the suspect had the guilty knowledge or whether they learned it from the police?

A. Again, that is not absolute, though. There might be a time you take a fingerprint, for example. You wouldn't tell the public we have a fingerprint on that, but if you have a suspect there and he is denying anything, you go, well, why do we have your fingerprint on the scene.

You supply nonpublic information but you are also guiding the interrogation



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

62

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

into the area you want to take it.

Q. So there might be some categories of information you can use to confront --

A. To let the suspect know that --

Q. You've got something on him?

A. That I had something, yeah. You wouldn't be here if I didn't.

Q. Even in situations where you might confront a suspect with evidence, whether you you have the evidence or not, by the way, right?

A. That's correct.

Q. You can lie.

A. Yeah.

Q. You still are holding back some critical details so that you can assess the reliability of what you are getting from the suspect?

A. That would be a very good tactic.

Q. And it is a critically important tactic if you are going to be able to assess the reliability of an ultimate confession?

A. Yes.

Q. And these were generally accepted



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

63

J. McELHONE

practices in 1988?

A. Again, you are talking about homicide detectives. There's general service detectives. They have a track record, you can know that they know what they are doing, yeah.

Q. And you took it upon yourself to make sure that the detectives in the homicide unit under your command understood this in particular, right?

A. Yes.

Q. Particularly amid all the turmoil that was going on at the time?

A. Again, we provided training from that seminar that I talked to you about. We had the Reid School of interviewing and interrogation come to the department several times, and many, if not all, of the detectives attended that course; another four-day course I believe.

Q. And one of the elements of the Reid School training is, in fact, holding back certain information and -- from the press and the public, holding it back during an interrogation so that if the suspect offers it



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

64

1 J. McELHONE

2 during the questioning, you know that is  
3 evidence of guilty knowledge?

4 A. Again, you are presuming that we  
5 have something that we are holding back.  
6 Sometimes you don't really have much more than  
7 what was out there, but it depends on each  
8 case, but if you have something you would not  
9 divulge it, if you definitely wanted to find  
10 out if that person had some knowledge of that  
11 case by having that piece of information that  
12 wasn't publicly available.

13 Q. Would you agree that even after a  
14 confession is elicited it, it remains  
15 important to assess the reliability of that  
16 confession?

17 A. Try to corroborate whatever  
18 details you have, absolutely.

19 Q. A detective's job is not done once  
20 there is a confession, is that fair to say?

21 A. No.

22 Q. Why is corroboration of a  
23 confession important?

24 A. It makes the confession much more  
25 reliable. They tell you a detail that you



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

65

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

come to learn later gets supported by another piece of independent evidence.

Q. Would you agree that it was part of your role as the CO of homicide to insure that confessions your detectives elicited were reliable?

A. Again, that's an area where the sergeant is there on the scene and, again I'm talking to the sergeant or the detective later.

Yeah, if something troubled me about what was going on there, I would definitely address it, but otherwise I would rely on what the sergeant was telling me and what the detective was telling me.

Q. Is it fair to say that given the turmoil that was going on between '85 through '87 when you took command, into 1988, you, as the commanding officer of homicide, paid particular attention to the reliability of confessions?

A. I reviewed the case, all of the cases and if there was a confession in the case, I would look for corroborating evidence



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

66

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

or talk to the detective, talk to the  
sergeant, yes.

Q. And direct the detective and the  
sergeant to continue investigating even after  
a confession?

A. If it wasn't evident, yeah,  
certainly

Q. Any solid lead should be pursued?

A. Absolutely.

Q. Even if inconsistent with the  
confession?

A. Absolutely.

Q. Did you see it as part of your  
role in that connection to be asking yourself  
and your subordinates, is this a reliable  
confession?

A. I would rely on -- usually a  
confession is one on one.

Q. Or two on one?

A. Or two on one.

And I would rely on their  
assessment of it, what do you think, you know,  
absolutely, they would tell me, he only knew  
something that they, you know, that we know



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

67

1 J. McELHONE

2 and they don't know, the public, being not  
3 publicly available.

4 So, yeah, I would talk to them and  
5 pretty much rely on what their instincts are,  
6 their tenure of having successfully or  
7 unsuccessfully interrogated subjects.

8 Q. So because you are not in the room  
9 during the interrogation, you are forced to  
10 rely on the after-the-fact reporting of the  
11 detective who elicited the confession?

12 A. Well, in '87 we had a procedure  
13 that the subject confessed in writing, orally  
14 first, then in writing, we would videotape it.  
15 We would call the assistant district attorney  
16 from the homicide bureau would come down and  
17 he would sit down with the detective and the  
18 suspect, and we would again go through the  
19 confession and videotape that.

20 So I did review and I think we had  
21 several of them where I reviewed the tapes of  
22 the videotaped confessions, and, again, was a  
23 method to assess the reliability of that  
24 confession.

25 Q. One value of videotaping a



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

68

1 J. McELHONE

2 confession is you know that the suspect  
3 actually said it, right?

4 A. Yes.

5 Q. It is hard for a suspect who sees  
6 himself on videotape confessing to say that  
7 never happened, right?

8 A. Right.

9 Q. However, you didn't have any  
10 practice in place during your tenure requiring  
11 the interrogation itself to be videotaped, did  
12 you?

13 A. Until we obtain the consent of the  
14 person who made the confession, the defendant,  
15 we didn't videotape.

16 Q. So there was no requirement that  
17 the questions leading up to the confession be  
18 documented on video?

19 A. Unless they consented, it wouldn't  
20 be on video.

21 Q. But they are never asked for  
22 consent to video until after they have already  
23 confessed, orally and in writing?

24 A. That's correct.

25 Q. And that was the case in 1988?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

69

J. McELHONE

A. Yes.

Q. And as we discussed earlier, in order to accurately assess whether a confession is reliable, you really need to know how it was generated, what the questions were and how the answers were elicited, right?

MR. DUNNE: I will object to the form. But go ahead, answer.

A. I would have a written confession at that point that I would be reading through, that, along with the discussion I would have with the detective or the detective sergeant, would convince me it was a reliable confession.

Q. So you are really relying on the reporting of your detective to tell you how it went down?

A. I'm second up in the chain, yes.

Q. So because you need to rely on the officer to accurately report to you, it is important that the officers under your command be truthful?

A. I had to trust them.

Q. You had to trust them?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

70

J. McELHONE

A. Yes.

Q. And you mentioned one of the things that you relied on in deciding whether you can trust them is their track record of taking accurate confessions?

A. Yes.

Q. And presumably also their track record of honoring constitutional rights of suspects?

A. Yes.

Q. That would include Miranda rights to counsel?

A. Yes.

Q. Advising them of their right to counsel?

A. Absolutely.

Q. Not putting words in their mouths?

A. Yes.

Q. Accurately documenting if the police leak or feed nonpublic information? You are relying on them to do that?

A. Yes.

Q. And if it had come to your attention that any of the detectives under



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

71

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

your command hadn't always been scrupulous and honest, you would need to pay even more close attention in a case where they elicited a confession, wouldn't you?

A. It would have to be addressed, yes.

Q. It would be much harder to rely on them to truthfully report, there is no problem with this confession, he did it, right?

A. Yes.

Q. So with a confession, one of the things that you did and that you required your detectives and the sergeant to do in assessing the reliability, was to look for independent corroboration?

A. Yes.

Q. You always wanted to ask if the confession was consistent with the known objective evidence?

A. Yes.

Q. You would also ask whether the confession leads you to any new evidence, right?

A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)



John McElhone

December 2, 2011

72

J. McELHONE

Q. You would ask whether the confession included true information that, while known to the police, couldn't have been known to anyone else except the perpetrator?

A. If that was available, yes.

Q. As a supervisor you would have been concerned if your homicide detectives were feeding or leaking nonpublic information to a suspect during an interrogation, wouldn't you?

A. Again, as I pointed out earlier, there might be times in that interview, interrogation that you might want to present the fact to let them know that you know what was going on.

I gave you a hypothetical on a fingerprint. There are times you might, if the person is just stonewalling, going I wasn't there, well, whatever, you might want to just give them some little piece of information to let them know you are on the right track, you are here for a reason. It is not an absolute, you know, you would never provide some little piece of information just



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

73

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

to let someone know that you know they were there.

Q. You know they were there?

A. Yes.

Q. Because you have evidence that they were there?

A. Yes.

Q. However, you wouldn't, for example, expose, in a hypothetical case where the killer left a calling card, the ace of spades on the body, right, that's a critical detail? Okay. That's the kind of thing you would want to hold back to see if you get out of the suspect, right?

A. Yes.

Q. It is not the kind of thing that an innocent person could guess had happened unless it were made public, right?

A. Right.

Q. So that's the kind of detail that the police department would hold back in part to be able to assess the reliability of a confession, right?

A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

74

J. McELHONE

Q. Because it was known in 1988 and earlier that sometimes innocent people confess to things they didn't do, right?

A. That's a phenomenon in criminal justice circles that that does happen, yes.

Q. And you and your subordinates in the homicide department understood that it was part of your role to guard against false confessions?

A. Yes.

Q. In fact, allegations about false confessions having been taken by homicide detectives were part of what was creating the turmoil in the mid '80s?

A. Yes.

Q. So when you said earlier that you relied on homicide detectives in assessing the reliability of a confession, you would rely on them to accurately tell you how the interrogation went?

A. Yes.

Q. You would rely on them to take accurate notes?

A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

75

1 J. McELHONE

2 Q. You would rely on them to tell you  
3 if they inadvertently or intentionally fed or  
4 leaked nonpublic information, right?

5 A. I would rely on them. I don't  
6 know if it would come out right away. It  
7 might be something we would talk about later.

8 Q. Because you would continue  
9 investigating even after a confession?

10 A. After reading the confession, if  
11 things had to be corroborated if there was  
12 other evidence that had to be explored, yes.

13 Q. Was it also part of your  
14 responsibility as CO to authorize arrests?

15 A. No.

16 Q. Was it part of your responsibility  
17 to review the circumstances of arrests?

18 A. Yes.

19 Q. And is it fair to say that it was  
20 part of your responsibility to review each  
21 case in which a homicide detective elicited a  
22 confession under your command?

23 A. Yes.

24 MS. CORNWALL: Let's take a  
25 five-minute break.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

76

J. McELHONE

MR. DUNNE: Sure.

(Recess: 11:37-11:45 a.m.)

BY MS. CORNWALL:

Q. I just what to clarify a couple of things that you mentioned in our first session this morning.

Do you remember we spoke about it being clear to the homicide detectives when you took command, the importance of taking and keeping accurate notes and reports?

A. Yes.

Q. And you said it was clear to them. How was it made clear to them?

A. Again, verbally from me, daily by, from their sergeants.

Again, they were new sergeants that were involved here. Bob Misegades was still there from years, but Bob Doyle, Kevin Cronin, Bill Pepper, they were all sergeants I worked with in my career and they were all very clear and the message was given out from me through them.

And also again this homicide seminar we had in-house where we brought them



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

77

J. McELHONE

in from New York City and, you know, he hammered on it every couple of days, you know, every day.

Q. Now, you said that you worked with Sergeants Cronin, Pepper and Doyle --

A. Yes.

Q. -- previously in other units?

A. Actually, Pepper and Cronin in the Third Squad detectives. Doyle, we were cops together in the Fourth but we just had a passing, we knew who each other were. He had a good reputation in the department. That's why I brought him in.

Q. What was his reputation in the department?

A. He had just finished a very intense case with Scott Carroll, that serial burglary 1 suspect where he was entering homes and raping women, and I think he set a precedent in the state with a voice ID, very thorough, very good detective sergeant.

Q. And you mentioned you brought him in?

A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

78

1 J. McELHONE

2 Q. So fair to say it was your  
3 decision that he be --

4 A. Yeah. Again, the I. concurred,  
5 the Inspector Murphy, and I think even Chief  
6 Feldman, we all agreed that would be a great  
7 thing.

8 Q. And did you also bring in Cronin  
9 and Pepper?

10 A. Cronin was there already. We had  
11 worked together.

12 And Sergeant Pepper was a  
13 detective sergeant. He and I were on  
14 different teams in the Third but we overlapped  
15 quite a bit so I knew of him. I think he was  
16 only there for about a year. I think  
17 Inspector Murphy brought him in when he  
18 assumed command of the homicide bureau for  
19 that tumultuous period during '85.

20 Q. So Sergeant Pepper was already in  
21 homicide when you --

22 A. Yes, but previously maybe a year.

23 Q. Sergeant Doyle is the one you  
24 brought in of the four --

25 A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

79

J. McELHONE

Q. -- based on his reputation?

A. Later down the line Mr. Gotties retired. Doyle took team 3 and I brought in Sergeant Horvath, George Horvath was the fourth sergeant. And I, again, I had a lot of latitude who would fit and I had to get approval, but they pretty much gave me my choice all the time.

Q. And you brought Doyle in based on his reputation?

A. Yes.

Q. And your belief that he was very thorough?

A. Yes.

Q. And a very good investigator?

A. Yes.

Q. And supervisor?

A. Probably the best out there at the time.

Q. And why did you bring in Horvath?

A. We worked together in the second precinct. He had come into the Fifth Squad where I was working previously. I think we almost passed each other there. But a



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)



John McElhone

December 2, 2011

80

1 J. McELHONE

2 willingness to want to come up there, and a,  
3 you know, another good worker I thought.

4 Q. When you said you made it clear to  
5 the detectives in homicide when you came on  
6 board that they needed to be taking accurate  
7 notes and reports, was there some kind of  
8 squad-wide sit-down when you took over in  
9 which you talked about the mission and how  
10 things might change?

11 A. Well, I think we used the opening  
12 of that training seminar that I think I said  
13 it was only a week after I got there that  
14 happened, by that time I had gotten to sit  
15 down and have a brief conversation with most  
16 of the them and then at the beginning of that  
17 said we had everybody come in, there is an  
18 overtime consideration, but you can change it  
19 to tour for training which is one of the  
20 contract provisions, so I could get everybody  
21 into one room. And we did it the day that we  
22 had Vernon Geberth there to present a one week  
23 school on homicide investigation.

24 Q. Did you have a role in making sure  
25 that training seminar took place?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

81

J. McELHONE

A. I think that was already put in place when I got there. One of the first conversations I had with Inspector Murphy was, I had this set up, we can do it next week and I just went from there.

What I did set up was, I met with the medical examiner, Charles Hirsch, and he has also a background in academia. He likes to teach, as well as be the medical examiner. And we arranged to have a once-a-month session where he would sit down with the whole squad and present, one month would be on stabbing wounds, one month would be on shooting, one month would be on sex crimes. And from his perspective what the medical examiner sees and what we should expect to see on our scenes. It was very helpful.

Q. Was that part of your goal to educate homicide detectives?

A. Training was a very big part of what I thought we should do, formal training. Most of the them heard it before from somewhere else, but it is coming from our medical examiner, coming from an outside



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

82

1 J. McELHONE

2 source and from that it became, I think a  
3 little bit more emphasis put on it.

4 Q. Is it fair to say that before you  
5 took command, training for homicide detectives  
6 was basically on the job?

7 A. Basic investigators course that  
8 the academy provides, but by the time you get  
9 to homicide, again you have a track record,  
10 you have, you know --

11 Q. You mentioned the track record  
12 earlier and I believe you said one of the  
13 things that you looked at to decide how much  
14 you could rely on a detective to accurately  
15 report whether a confession was reliable was  
16 their track record of successful confessions  
17 in the past?

18 A. Yes.

19 Q. What is a successful confession?

20 A. Were they able to elicit a  
21 confession in a legally accepted manner.

22 Q. Was part of your thinking about  
23 whether the track record was, of taking  
24 successful confessions, whether they were  
25 reliable confessions?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

83

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

A. Yes.

Q. Whether they were true confessions as opposed to false confessions?

A. I don't recall ever encountering a false confession in the police department.

Q. Never?

A. Never.

Q. So when you agreed earlier that you were familiar with the phenomenon of false confessions, what was your understanding of this issue?

A. From training that I had received. I went to the FBI academy in 1987. I was there for three months and I had a forensics course and one of them was on death investigation and there was talk and discussion about false confessions in and around the country, basically. Investigators from around the world, actually. My roommate was from Northern Ireland, but, you know, there was discussion of false confessions at that point, the phenomenon that exists.

Q. And was that something you were looking at in determining whether a detective



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

84

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

had been successful in eliciting a confession?

A. If I had heard anything like that or saw one like that, yeah, I would have been very concerned about that.

Q. Or if, for example, a confession could not be corroborated, that would cause you some concern?

A. Again, you know, we are not CSI. We don't always have all the information. So, you know, a lot of times certain things can't be corroborated, you know, they have to be, or they are corroborated generally time-wise or, you know.

Q. What is general corroboration, what do you mean by that?

A. Well, it wouldn't be as specific as, you know, that the ace of spades as you pointed out or anything like that. You don't have cases like that very often, if at all, you know.

Q. But certainly detectives should always have been seeking out corroboration, right?

A. To the point you are in an



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

85

J. McELHONE

interrogation, you probably have enough, you have enough to make reasonable cause to believe you wouldn't have the person in custody. At that point you have certain evidence that leads you to believe that this person has committed the crime. So that part you would have.

Q. And as we --

A. I don't know if any of it would be publicly available at that point.

Q. And you agreed earlier, did you not, that even after a confession is elicited it is important to continue investigating?

A. Yes, there are avenues that have to be -- or weapon used or whatever, it has to be followed up.

Q. It is important to continue investigating, can the confession be corroborated?

A. Yes.

Q. Are there open leads to be followed?

A. As a result of that confession, yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

86

J. McELHONE

Q. Either as a result of or inconsistent with, right, that still had to be pursued?

A. Yes.

Q. So you always had to explore whether a confession could be corroborated. It wasn't always possible to get corroboration but you always had to look for some?

A. I agree.

Q. And would you have had a concern if a confession was inconsistent with the objective evidence?

A. Yes.

Q. You would have a concern about the reliability of that confession, right?

A. Yes.

Q. And it would prompt you to seek out or to insure that the detective and the sergeant kept investigating, right?

A. Tried to explore why the inconsistency, yes.

Q. That's when corroboration becomes all the more important?

A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

87

1 J. McELHONE

2 Q. And following open leads becomes  
3 all the more important?

4 A. Yes.

5 Q. Because if your confession is not  
6 reliable, you may have a guilty person still  
7 on the loose?

8 A. That's possible.

9 Q. And that's one of the worst  
10 nightmares that could face a police  
11 department?

12 A. Sure.

13 Q. Is the false confession and the  
14 arrest of an innocent person for a crime they  
15 didn't commit?

16 A. That would be correct.

17 Q. I would like to turn now to ask  
18 you a little bit about this period of turmoil  
19 that you referred to that predated your  
20 assuming command of the homicide unit, all  
21 right?

22 A. All right.

23 Q. In the '70s, the late '70s, you  
24 were a patrol officer?

25 A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

88

J. McELHONE

Q. You lived in Suffolk County during your entire career, I take it?

A. Yes.

Q. Are you a Newsday reader?

A. Yes.

Q. Do you read the New York Times?

A. Occasionally.

Q. Were you a Newsday reader in the '80s?

A. Yes.

Q. Do you have a subscription?

A. Yes.

Q. It comes every day?

A. To this day.

Q. And occasionally you read the Times?

A. Yes.

Q. So were you aware of the allegations that came out in the late 1970s that homicide detectives had been using physical force to extract confessions?

A. Through the newspaper as you point out and media accounts, yes, I'm aware of that.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

89

1 J. McELHONE

2 Q. You were aware of those  
3 allegations?

4 A. Yes.

5 Q. And you were aware that criminal  
6 suspects were alleging they had been beaten  
7 up --

8 A. Yes.

9 Q. -- in interrogation rooms?

10 A. Um-hum.

11 Q. And if that had happened, that  
12 would have been a serious concern, obviously,  
13 right?

14 A. Yeah.

15 Q. You were aware in the late '70s of  
16 the allegations of phone booking, that  
17 homicide detectives and others had used phone  
18 books to beat suspects so they wouldn't leave  
19 marks? Are you aware of those allegations?

20 A. I might have read that somewhere.

21 Q. Maybe in Newsday?

22 A. Yeah, probably.

23 Q. And that's a very serious  
24 allegation?

25 A. Um-hum.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

90

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. That's a yes, just for the record?

A. Yes, I'm sorry.

Q. Were you aware that the, that these allegations going back to the late '70s were serious enough that the Suffolk County Bar Association did an investigation?

A. I had heard about that as a patrol officer. You know, people are talking about what's going on and reading the paper, yeah, I had heard about it.

Q. Did that cause you any concern as a member of this department?

A. Personally, no. I knew --

Q. It didn't have anything to do with you?

A. Yes, but it was something we weren't all very proud of, we always felt like people were looking over their shoulder at us.

Q. And if those things had been going on, that would be a serious problem?

A. Yes.

Q. Were you aware that in late 1985 Judge Stuart Namm wrote a letter to then-Governor Cuomo asking for the appointment



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

91

1 J. McELHONE  
2 of an independent commission to investigate  
3 whether Suffolk County detectives had  
4 committed perjury?

5 A. I was aware that a letter was  
6 written by Judge Namm, yeah. I think I  
7 learned about it when I was assigned to the  
8 homicide squad, I was provided a copy of it,  
9 look at that allegation, whatever.

10 MS. CORNWALL: Can we mark that as  
11 9, please.

12 (Plaintiff Exhibit 9, letter  
13 from Judge Stuart Namm to Governor  
14 Cuomo marked for identification, as  
15 of this date.)

16 Q. Showing you what's been marked as  
17 Exhibit 9, do you recognize that as Judge  
18 Namm's letter to Governor Cuomo from late 1985  
19 asking for the appointment of an independent  
20 investigative body?

21 A. I don't recall it being this many  
22 pages, but, yes, I'm aware of that letter was  
23 written. I'm sure this is it.

24 Q. Now, you said I believe that you  
25 were actually provided a copy of it for the



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

92

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

first time when you assumed command of  
homicide, is that right?

A. Yes.

Q. That was in February of 1987?

A. Yes.

Q. Who gave you the copy?

A. Inspector Murphy, Tom Murphy.

Q. Do you remember the context?

A. No. We were talking about the SIC  
commission was investigating and this was the  
impetus of them coming to investigate  
narcotics and homicide primarily, but other  
aspects of the department and then were  
talking about with the shortcomings that were  
detailed in this letter and in the SIC report.

I don't think I had the report  
then in '87. I don't know if it was written  
at that point but I saw it at some time later.

MS. CORNWALL: This will be 10.

(Plaintiff Exhibit 10,  
Resolution of the State of New York  
Commission of Investigation  
authorizing an investigation into  
the Suffolk County Police



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquireolutions.com

John McElhone

December 2, 2011

93

J. McELHONE

Department and others, adopted as of January 9th of '86 marked for identification, as of this date.)

Q. See if we can help with the time line a little bit. I'm handing you Exhibit 10.

A. Okay.

Q. Which is the Resolution of the State of New York Commission of Investigation authorizing an investigation into the Suffolk County Police Department and others, adopted as of January 9th of '86.

A. Um-hum.

Q. Does that refresh your recollection of when the actual investigation was authorized and that it began sometime thereafter?

A. Yes.

Q. So the hearings themselves, the SIC hearings had been going on before you assumed command of homicide. Were you aware of that?

A. They were initiated obviously in '86. I was not assigned there then.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

94

J. McELHONE

Q. As a Newsday reader, the public hearings were reported in Newsday, you became aware of what was going on?

A. Yes.

Q. And there was talk around the department, right?

A. Exactly.

Q. This was a big deal?

A. Yes.

Q. Were you also aware that in December of 1986 Newsday ran a series called The Confession Takers?

A. Yes.

Q. Did you read that --

A. Yeah.

Q. -- when the paper came out?

A. Yes.

Q. And was there talk about that in the department?

A. Yeah, a bit.

Q. In December of '86 you were --

A. In the Fifth Squad.

Q. -- in the Fifth Squad as a detective lieutenant CO?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

95

J. McELHONE

A. Yes.

Q. This was just predating your taking over as commanding officer of homicide?

A. That's correct.

Q. And remind me when you got the phone call from, was it Captain Feldman?

A. Chief.

Q. Chief Feldman, thank you.

A. About a week before I was assigned. So it would be somewhere around middle of February I guess.

Q. Of 1987?

A. Yes.

Q. Just a month or two after The Confession Takers series came out?

A. Okay.

(Plaintiff Exhibit 11, copy of The Confession Takers newspaper story marked for identification, as of this date.)

Q. I'm handing you a copy of The Confession Takers and I'm just going to ask you some questions to refresh your memory about some of the things that were reported in



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

96

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

the series that you read about when they were published. And I'm happy to give you page numbers if you would like to follow along.

A. Okay.

Q. On the very first page it reports that Newsday had done a year long study finding that suspects made incriminating statements in 94 percent of homicide cases since 1975. Do you see that?

A. Yes, I do.

Q. And it goes on to say that experts believe that percentage of confessions is unparalleled around the country.

A. Um-hum.

Q. Were you aware when you took over the homicide unit of its extraordinarily high confession rate?

A. From this article, yeah.

Q. From the article you were aware of it?

A. Yeah.

Q. And is this something that you talked about with Chief Feldman or inspector, Detective Inspector Murphy in connection with



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

97

J. McELHONE

taking over?

A. No.

Q. Further down on the first page, Newsday reports, quote:

"In more than a quarter of the cases in the past five years, the detectives testified that suspects gave only oral statements making it difficult to corroborate the police accounts. In others, police testified that suspects made oral statements implicating themselves in ways that went beyond their signed statements. In nine cases police offered confessions that suspects refused to sign."

Do you see that?

A. Yes.

Q. And you read that when it was published, right?

A. I presume, yeah.

Q. As a supervisor, given the importance you placed on accurate and thorough documentation, would it have caused you concern later on when you were the CO of



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

98

1 J. McELHONE

2 homicide, if police were alleging that  
3 suspects made additional statements above and  
4 beyond what was in the signed confession?

5 A. I would want to see it documented  
6 somewhere, absolutely.

7 Q. And in a case where you have a  
8 suspect who is confessing, signing their name  
9 saying this is my confession, would it cause  
10 you concern if police are attributing  
11 additional incriminating statements to that  
12 suspect that didn't get reduced to writing in  
13 the written confession?

14 A. I would want to see it documented,  
15 yes.

16 Q. When you say documented, what do  
17 you mean?

18 A. At least in their notes, but  
19 sometimes, and I remember a couple of  
20 occasions we would go and take another  
21 confession from somewhere after they have  
22 thought about it or maybe somebody else has  
23 approached them to say, how come, you know,  
24 what about, where did you put the gun, where  
25 did you leave the knife. And then they will



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

99

J. McELHONE

add that and take another confession or an addendum or you would report it somewhere.

Q. In a case where you don't have a second confession, in a case where you have one written confession signed by a cooperating suspect --

A. Um-hum.

Q. By which I mean a suspect who is cooperative in an interrogation and admits their guilt and signs a full confession?

A. Um-hum.

Q. Would it cause you any concern if police attribute other incriminating statements to that suspect that the suspect didn't acknowledge by signing it?

A. I would question how that came to be and make sure that it was documented and, you know, passed along to the district attorney's office.

Q. Well, of what value is a police note or a police report saying the suspect told me X, if the suspect has signed a detailed confession that doesn't include fact X?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

100

J. McELHONE

A. There are instances, as I pointed out before, that after thinking about it awhile, a person is in our custody a while longer, other information will come out and decision has got to be made, do you have it written, reduced to writing and have him sign it or a lot of times a uniform officer taking him to court or something else where something comes out, an additional admission that now I would like to see reduced to writing, incorporated, discuss the circumstances where it was given and then include it in the case.

Q. And if a suspect makes an admission, your ideal situation is that the suspect signs a confession acknowledging guilt?

A. That would be ideal and go to a video, that would be perfect.

Q. And going to video.

So in a situation where you have a cooperative suspect who is giving it all up and signing a confession, but where that confession is inconsistent with the forensic facts, for example, and then a police officer



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

101

1 J. McELHONE  
2 produces some time later a note or a report  
3 claiming that that suspect made an  
4 incriminating statement resolving the  
5 discrepancy with the evidence, does that cause  
6 a concern for you?

7 MR. DUNNE: Is this a  
8 hypothetical?

9 A. I think you have taken three steps  
10 there.

11 MS. CORNWALL: Yes, it is.

12 A. But what you said I would agree  
13 with you.

14 Q. It would be a concern?

15 A. Initially the confession was  
16 corroborated; now it is not.

17 Q. It was not corroborated.

18 A. Was not corroborated, now we have  
19 new information that is corroborated?

20 Q. That is only in a police report  
21 but you don't have the suspect signing off on  
22 it?

23 A. That could happen.

24 Q. That could happen. Would it cause  
25 you a concern --



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

102

1 J. McELHONE

2 A. I would definitely pursue it a  
3 little further and say how did that happen and  
4 what were the circumstances and incorporate  
5 that into whatever we used to memorialize that  
6 statement.

7 Q. You should also continue to be  
8 assessing the reliability --

9 A. Yeah.

10 Q. -- of information that comes to  
11 your attention, right?

12 A. Yes.

13 Q. On the second page of The  
14 Confession Takers, there is a quote from John  
15 Buonora who was chief felony prosecutor for  
16 Suffolk County, saying that the emphasis on  
17 confessions leads homicide detectives to  
18 overlook other evidence, and he is quoted as  
19 saying:

20 "Their success rate is probably  
21 not as good as it should be because of  
22 their reliance solely on the confession  
23 and the lack of methodical detective  
24 work."

25 Do you agree with the



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

103

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

characterization that the homicide unit had an overreliance on confessions in 1987 to '89?

A. No.

Q. Was it your experience that homicide detectives were equally thorough in pursuing objective evidence, forensic evidence, physical evidence, as they were obtaining confessions?

A. Yes.

Q. Was it your experience that homicide detectives would pursue independent evidence vigorously even if it contradicted a confession?

A. I was sure they would do that.

Q. Well, that's what they should have done, right?

A. Yes.

Q. Well, they didn't do it in every case, did they?

A. Well, you are talking about '85.

Q. I'm asking in your tenure.

MR. DUNNE: Let's clarify the record. Exhibit 11 refers to an article identified as December of '86.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

104

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

MS. CORNWALL: Correct.

MR. DUNNE: And that also is the  
quote from Mr. Buonora. Okay.

Q. Did you see it as part of your job  
when you took over the homicide unit in 1987  
to make sure that detectives were not as  
reliant on confessions as they had been  
previously?

A. I never downgraded confessions.  
It is a very important part of any criminal  
case. If it was legally obtained, I stressed  
on it, it had to be legally obtained, that we  
would not take it to the exclusion of any  
other theory or evidence, but it was certainly  
something I never discouraged. It was to me  
the mark of a perfect case, a good case, you  
had physical evidence, you have a suspect.  
You have a legally obtained confession and  
hopefully it went to as far as a videotaped  
confession and then it was like all you could  
ask for.

Q. So a perfect case would include  
both a confession and corroboration?

A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

105

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. Did you take it as part of your role to increase the focus on corroboration, independent objective evidence, without denigrating confessions?

A. Specifically when I came on board, I put more emphasis on the detective sergeants in everything.

Q. How so?

A. When we went to a scene, I would try to get to as many as I possibly could, they would go to everyone. If the lead detective, for whatever reason, for interview or interrogation, had to be removed from the scene, the sergeant would then make sure that another detective was assigned to recover every piece of evidence that was possibly there. Other detectives in the team would go out and interview witnesses if there were, neighborhood canvasses or something, we had a team there and if you needed more, one of the reasons I was at the scene I will get you more staff, you know, we're not going to overlook anything. This is a homicide case.

Q. So under your command, officers



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

106

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

certainly shouldn't have been relying on confessions to the exclusion of other evidence?

A. Not to the exclusion of other evidence, no. It is a package. The whole scene, all the physical evidence and if obtainable, obviously a confession.

Q. Further down on the second page of this December 1986 Newsday report, there is a reference to:

"Appeals court having struck down ten suspect convictions because confessions were improperly obtained which was more reversals than from Nassau and Westchester combined. Defendants were acquitted or charges were dismissed in 12 other cases where questions were raised about the credibility of police testimony, the handling of physical evidence or the use of inmates who provided testimony about jailhouse confessions."

When you took over homicide were you aware that so many homicide cases had been



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

107

1 J. McELHONE

2 overturned based on problems in the  
3 confessions?

4 A. I actually wasn't. From reading  
5 this article I remember that there were a  
6 number of them. I didn't know that there was  
7 that number even.

8 Q. But when you assumed command, you  
9 were aware that there had been some number?

10 A. Yes.

11 Q. Of reversals?

12 A. Yes.

13 Q. In homicide cases?

14 A. Yes.

15 Q. Because of problems in the way the  
16 confessions were elicited?

17 A. Yes.

18 Q. And was that a concern of yours?

19 A. Certainly.

20 Q. As a result did you put additional  
21 emphasis on the importance of taking a  
22 reliable confession?

23 A. Yes. We had a training in that  
24 area at the police academy, all detectives go  
25 through a one-week course and part of that is



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

108

J. McELHONE

the right to counsel and Miranda and all of the legal portions of that. And then much like with Dr. Hirsch where mentioned he came in once a month to train everybody on a couple of those sessions, I remember Mark Cohen specifically from the DA's office and others would come in and talk about Miranda because it was evolving, as you know, too, in that period about pending cases and lawyers and, you know, a defendant who has a lawyer in one case, but now he is a suspect in a murder, can we, can't we. That was one of the reasons why also in the scene, this is something Ed Jablonski, the head of the homicide bureau in the DA's office, and I put together right on the very first day, one of his DAs was going to respond to every scene. And so if there was a question do we need a search warrant to go further, is there a pending case here where we can't talk to the suspect, they were plugged in. They were almost like a lead detective, ADA was assigned from the scene.

Q. So it sounds like you instituted a number of pretty significant changes in how



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

109

1 J. McELHONE

2 the department operated?

3 A. The homicide squad, yes.

4 Q. Is it fair to say you thought that  
5 was necessary as a change from how things  
6 operated before you took over?

7 A. It was a necessary and pretty much  
8 a mandate from when I got assigned there from  
9 Inspector Murphy and others that we are going  
10 to work much closer with the DA's office, make  
11 sure that Dr. Hirsch, the ME is plugged in,  
12 and there was cooperation, I think maybe  
13 Scanlon was a little bit brusque in not talking  
14 to these people and it was something that we  
15 wanted to do, to adopt.

16 Q. I would like to understand more  
17 about this mandate that came to you from  
18 Murphy and possibly also from Chief of  
19 Detectives Feldman when you took over --

20 A. Um-hum.

21 Q. -- we just started talking about  
22 the reversal of convictions in homicide cases  
23 for the problems and the legality of how the  
24 confessions were obtained. We talked about  
25 the SIC starting its public hearings and



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

110

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

investigation of the narcotics and homicide  
bureaus?

A. Um-hum.

Q. And problems with confessions and  
perjury by officers, we're looking at The  
Confession Takers story with its allegations  
that you read about that just predated your  
taking over.

Is it fair to say that the mandate  
that you got really was a direct result of  
this tumult and turmoil going on in the  
department?

A. I would say, yeah, that's a fair  
assessment.

Q. And a big part of the turmoil and  
the tumult was focused on how homicide  
detectives were taking confessions and how  
they were reporting on their conduct?

MR. DUNNE: Object to the form of  
the question, but go ahead and answer it  
as best you can.

A. That was one part of it, yes.

Q. That was a big part of?

A. There was -- yeah, note-taking,



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

111

1 J. McELHONE

2 reliance on the confession to the exclusion of  
3 physical evidence, these were certainly areas  
4 that doesn't, can't go on, certainly not a  
5 good investigation if you have done any of  
6 that.

7 Q. And there were serious allegations  
8 out there predating your command of homicide  
9 that officers had been perjuring themselves  
10 about what they had done to get confessions  
11 you were aware of those allegations, weren't  
12 you?

13 A. From what Newsday was reporting  
14 the allegation was out there. I had no  
15 personal knowledge of anything.

16 Q. But those are very, very serious  
17 allegations?

18 A. Perjury is a felony. They should  
19 be arrested.

20 Q. And so if it came to your  
21 attention that any detective under your  
22 command had committed perjury in the past,  
23 that officer should not be on the force,  
24 right?

25 A. I don't think -- yes, if it was a



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)



John McElhone

December 2, 2011

112

1 J. McELHONE

2 perjury situation.

3 Q. Lying under oath about something  
4 material --

5 A. Yeah.

6 Q. -- would be perjury?

7 A. Yes.

8 Q. And if that came to your attention  
9 you shouldn't allow --

10 A. It would be a serious concern I  
11 would have.

12 Q. You really shouldn't allow that  
13 detective to be out investigating right?

14 A. It would be a very serious concern  
15 I would have.

16 Q. Well, you certainly couldn't rely  
17 on them to accurately report what they had  
18 done if they had been lying about what they  
19 did under oath in the past, right?

20 A. That's correct.

21 Q. And that's critically important  
22 for you as a CO to be able to rely on your  
23 detectives to tell the truth about what they  
24 have done?

25 A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

113

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. Let's go through and list the detectives who were in homicide as investigators when you started there.

A. I can't do that from memory.

Q. First of all, you made a reference to teams earlier?

A. Yes.

Q. How many teams were there?

A. Three.

Q. And what was this format?

A. It was much like general service that I explained early when I was a detective sergeant. There were four days of 9 to 5s, two days off, four days of 5 to 1s, two days off, and the other team would obviously be doing the two days off during the interim.

Q. And how many detectives were assigned to homicide during your tenure there?

A. It fluctuated. It was 20 to 25 probably.

We had the Richard Angelo case. He was the nurse who was killing his patients in Good Samaritan Hospital and that was a very intensive case. We ended up exhuming like 23



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

114

1 J. McELHONE

2 bodies to see if they were poisoned by him.

3 It took on a life of its own, so I imported a  
4 couple of other detectives at that point, too,  
5 to just work --

6 Q. For that case?

7 A. -- on that case. So that is why  
8 it is fluid. And others were retiring, and  
9 others were coming in, you know.

10 Q. Let's see if we can identify as  
11 many as we can. Detectives who were in  
12 homicide when you joined in '87, who do you  
13 remember being there?

14 A. I'd have to -- I want to make sure  
15 I'm accurate, too, because as I said there  
16 were people come in in '88 and '87 and there  
17 was a period of time I was in charge of major  
18 crimes as deputy inspector and I had seen so  
19 many there, but I'm not sure if they were  
20 there at that time.

21 Q. Let's try it this way. You agreed  
22 earlier there was an exodus, if not a mass  
23 exodus, of detectives out of homicide?

24 A. A lot of people I knew who were  
25 there, were no longer there, yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

115

1 J. McELHONE

2 Q. Was any of this old guard who had  
3 been around before you joined, still there in  
4 homicide when you took over?

5 A. In my estimation there were three  
6 or four.

7 Q. Who were those?

8 A. Jackie Miller, John Miller, Jim  
9 McCready, Bill Donohue and Mike Ryan. Those  
10 four probably had the longest tenure there  
11 when I walked in the door. Everyone else was  
12 rather new or brand new.

13 Q. So these four, Miller, McCready  
14 Donohue and Ryan were part of the old guard?

15 A. Old guard is your word.

16 Q. Fair to say -- what would you call  
17 it?

18 A. The most experienced.

19 Q. The most experienced. They had  
20 been in the homicide unit throughout the  
21 turmoil?

22 A. Yes.

23 Q. And stayed on?

24 A. Yes.

25 Q. Did all four of them stay on



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

116

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

through your tenure at homicide?

A. I believe Mike Ryan retired about a year later.

Jack Miller transferred over to the intelligence section.

I think Jimmy and Bill were there throughout my tenure. I'm not sure.

Q. So is it fair to say, other than these four, all of the other detectives who made up the 20 or 25 --

A. To the best of my recollection.

Again, it is almost like Sergeant Pepper. I think they were within a year of me getting there. They were -- as other people -- there were a lot of retirements, so they were replaced either by Inspector Murphy or maybe even Bob Dunn who was the lieutenant during that period, but they were relatively new.

Q. Did you consider it part of your role in assuming command to familiarize yourself with the track records of these four officers who had been in homicide for so long?

A. I relied on the information I was



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

117

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

given from Inspector Murphy or from Lieutenant Scanlon or the bosses, the sergeants that were there.

Q. And what kind of information were they providing you?

A. Well, one of my first questions when I got there, anybody here that has to leave.

And Inspector Murphy said no, pretty much everyone who had to leave was gone now, and it would be my decision if I wanted to transfer somebody out or transfer people in, you know, who would come in.

Q. And what did you mean when you asked Inspector Murphy is there anyone who needs to go?

A. From the SIC report, from internal affairs, I believe they were doing investigations into this matter, from the DAS office -- I hadn't been there. I had been down in the Fifth Squad working Brookhaven cases. So, you know, tell me what's going on, is there something pending in the DA's office or internal affairs or something that would



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

118

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

make them not a suitable candidate to stay in homicide squad.

Q. When you are referring to this matter, are you referring to the allegations of homicide detectives coercing confessions fabricating evidence or committing perjury?

A. Whatever --

Q. That was the matter --

A. Whatever the reason would be, they would tell me he's not a good candidate to stay.

Q. And specifically this was in the context of the SIC investigation which was investigating allegations that homicide detectives had coerced confessions, fabricated evidence and perjured themselves, right?

A. That would have been part of it or other reasons, you know, what's the history here, I'm coming in cold.

I never worked in headquarters before. I was always out in the precincts. So now I'm coming up to headquarters, is there an internal affairs case I should be aware of, is there -- the DAs office investigating -- I



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

119

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

think at the time the SIC, the county legislature was looking at it. I mean, it was crazy; it was a crazy time.

Q. It must have been a crazy time.

A. Yeah, it was. And I'm coming in cold.

So tell me, does anybody here have to go before we start implementing the way we are going to go from here on forward.

Q. Was this one conversation you had with Inspector Murphy?

A. Yeah, we talked almost daily now. We're both in headquarters and he is in charge of the bureau and homicide is a very visible area. He would stop by every day, what's going on, talk.

Q. So you were really relying on him to fill you in on whether you had any problem officers?

A. At that point initially when I took over. After that I would ascertain myself or through my sergeants, do we have any problems.

Q. Right. And like you said one of



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

120

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

the things you later relied on was your officers' track records of success?

A. Um-hum.

Q. So you had to be familiar with their track records of interrogations, taking reliable confessions and making good cases in order to do that, right?

A. I presumed basically that they were in homicide squad and they were in homicide squad for that many years that they were capable of doing that. And if there was no negative that was being reported to me that there is a problem with so-and-so, then I had to go with that.

Q. I just want to make sure I'm understanding you. You said you presumed, they have been on the job all this time, unless somebody tells me there is a problem, I assume they are okay and that they are good cops?

A. I haven't heard anything to the contrary, and again to get to the point where you are a homicide detective, you have already been a detective, now you are selected to go



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

121

1 J. McELHONE

2 to the homicide squad and making cases.

3 Q. Were you aware that Jim McCready  
4 was specifically identified as the subject of  
5 perjury and fabrication of evidence  
6 allegations before the SIC?

7 A. I did not. I know he was  
8 mentioned in that report. Perjury was never  
9 mentioned.

10 Q. Is this the first that you are  
11 hearing of this?

12 A. I reviewed the SIC report and I  
13 referred to the incident I think you are  
14 talking about, just in preparation for this,  
15 but....

16 Q. Let's just take a minute.  
17 So you did prepare for today's  
18 deposition?

19 A. I reviewed.

20 Q. Tell me everything you reviewed.

21 A. The SIC report, the final report.

22 Q. The 1989 report I'm going to show  
23 you a copy of it. We will have it marked.

24 (Plaintiff Exhibit 12, 1989

25 SIC report marked for



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

122

1 J. McELHONE

2 identification, as of this date.)

3 Q. When you say you reviewed the SIC  
4 report, are you referring to what we have now  
5 marked as Exhibit 12?

6 A. Yes.

7 Q. Any particular sections of it you  
8 paid closer attention to in your preparation  
9 for the deposition?

10 A. Certainly the ones dealing with  
11 the homicide squad.

12 Q. Had you ever read the report  
13 before?

14 A. No. Excerpts of it I think and  
15 discussions again with my bosses at the time  
16 or with other people, other officers.

17 Q. What else did you look at to  
18 prepare for your deposition, if anything?

19 A. I reviewed the case on the Arlene  
20 and Seymour Tankleff, the police department  
21 report.

22 Q. You say you reviewed the police  
23 department report on the case?

24 A. Reports, the case file.

25 Q. You looked at the case file?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

123

J. McELHONE

A. Yes.

Q. Did you go to the department and look at the original case file?

A. No, I was supplied by Mr. Dunne.

Q. You looked at a copy of the case file?

A. Yes.

Q. Of the murder investigation?

A. Yes.

MR. DUNNE: A portion of it.

Q. Which portion did you look at?

A. Supplementary reports and the offense reports, the official reports that you would expect in a homicide case.

Q. Did that review refresh your recollection about the case?

A. Again, yeah, there were certain aspects of it that over time I had forgotten about, yeah.

Q. Anything else other than the SIC report and some Suffolk County Police Department reports of the Tankleff homicide investigation that you looked at?

A. A couple of the hearings that were



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

124

1 J. McELHONE  
2 involved in this civil action, I don't know, a  
3 50H and a 440 -- I'm not an attorney so just a  
4 quick reading through it. By the time I'm  
5 done, I have a cardboard box sitting on the  
6 floor in my dining room.

7 Q. Welcome to our lives.

8 So you read Mr. Tankleff's  
9 testimony in the 50h hearing?

10 A. Very brief.

11 Q. You skimmed through that?

12 A. Yes.

13 Q. When you say 440, did you read a  
14 transcript of a postconviction hearing in  
15 which a number of people testified back in the  
16 first decade of the 2000s?

17 MR. DUNNE: 2004 or 2005.

18 A. Yeah, I looked at -- I don't  
19 recall seeing minutes of the testimony or  
20 anything, but I got familiar with the cast of  
21 characters there.

22 MR. DUNNE: It was your demand.

23 By counsel, I showed him your demand  
24 listing the names when you made the  
25 request for their files, I gave him a



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

125

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

copy of your demand for the list of  
names. That's what he is referring to.

Q. So you looked at a discovery  
demand that we've made familiarizing yourself  
with the list of alternate suspects in the  
case --

A. Yes.

Q. -- whose names came out in  
connection with the postconviction proceeding?

A. Yes.

Q. Did you review any of the  
underlying material from the postconviction  
proceedings?

A. No.

Q. You didn't read those transcripts?

A. No.

Q. Any of the briefing?

A. No.

Q. How about the Second Department's  
opinion vacating Mr. Tankleff's conviction,  
did you read that?

A. I think I did. Is that one of the  
little things -- yeah, I guess so.

Q. Was that the first time you had



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

126

1 J. McELHONE

2 read that opinion?

3 A. Yes.

4 Q. But you have obviously been aware  
5 of it previous?

6 A. Following the paper like you said  
7 earlier, Channel 12, Newsday and whatever I  
8 was aware that these people had surfaced and  
9 ended up with the Attorney General coming in  
10 again and the SIC coming in again.

11 Q. So you are familiar, generally  
12 speaking, with the entire life of the criminal  
13 case?

14 A. The process over the last 20  
15 years, yes.

16 Q. And even after you transferred out  
17 of homicide, even after your retirement, fair  
18 to say you have continued to learn about the  
19 progress of the case?

20 A. From public means, yeah.

21 Q. Other than the materials we have  
22 talked about already, did you look at anything  
23 else to prepare for your deposition?

24 A. No.

25 Q. When you had this conversation



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

127

1 J. McELHONE

2 with Detective Inspector Murphy --

3 A. Deputy Inspector Murphy.

4 Q. Deputy Inspector. I will get it  
5 right at the end of the day.

6 -- about whether you had any  
7 homicide detectives who needed to go --

8 A. Yes.

9 Q. -- to the best of your knowledge  
10 what was he relying on in reporting back to  
11 you?

12 A. Well, he had assumed command of  
13 the homicide squad for several months before I  
14 got there, and from his personal day-to-day  
15 dealings, I know he was, he had a background  
16 in narcotics investigation. So he was  
17 following the SIC hearings and things much  
18 more closely than I was, you know, so we were  
19 going pretty much by that and he had  
20 conversations with the district attorney's  
21 office at that point and the chief of  
22 detectives which way we wanted to go.

23 Q. Did you learn either from him or  
24 from any other source when you assumed command  
25 that Detective Jim McCready was alleged to



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

128

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

have fabricated a police report in a homicide case?

A. I was told his deficiency was note-taking. That he had made a mistake in a case and it was pretty much because he didn't take adequate or any notes at the time he was doing it.

Q. So then is it fair to say that you did not learn he was accused of having fabricated a police report?

A. No, I didn't know that.

Q. Were you made aware from Deputy Inspector Murphy or any other source that Detective McCready had been accused of perjuring himself in connection with that same case?

A. I knew there was a mistake made in that case. That's the way it was portrayed to me. And it was something that was definitely attributable to his failure to take adequate or any notes at that time.

MR. DUNNE: I'm just going to raise an objection to the supposition about a false report. We may have a



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

129

1 J. McELHONE

2 difference on what we are interpreting,  
3 but the answer stands. I just want to  
4 note that for the record.

5 Q. Tell me everything -- withdrawn.  
6 Had you ever worked with Jim McCready before  
7 taking over in homicide?

8 A. We were patrol officers in the  
9 Fourth Precinct in the late '70s.

10 Q. How long did you overlap  
11 approximately?

12 A. Maybe six months, a year. Well,  
13 actually, we were one squad apart. In uniform  
14 there was 22 squads. So four days a week we  
15 would be on the same shift together.

16 Q. So you had an acquaintance with  
17 him?

18 A. Yeah, see him in the precinct, you  
19 know, occasionally we would back each other up  
20 on a call. At the time I was in the patrol  
21 car in Lake Ronkonkoma and he was more like in  
22 the Islip area of Ronkonkoma and I knew of  
23 him.

24 Q. And other than your acquaintance  
25 with him from that period of time, what else



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

130

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

did you know about him when you assumed  
command?

A. Had a reputation for being a very  
good detective, very tenacious.

Q. And this reputation came from  
where?

A. Other detectives, other bosses.

Q. Very good detective, very thorough  
did you say?

A. I said very tenacious.

Q. Very tenacious, what does that  
mean to you?

A. When he got ahold of a case, he  
pursued it vigorously. He tried to put a lot  
of effort into doing whatever he could to  
resolve the case.

Q. To close the case --

A. Yes.

Q. -- with an arrest?

Right?

A. To resolve the case.

Q. And that means arrest someone?

A. Find out who was responsible for  
the murder and make an arrest, sure.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

131

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. And as far as you learned from Deputy Inspector Murphy, the only allegation out there about Jim McCready was that he had made a mistake with respect to note-taking?

A. Yes.

Q. If you had been told or learned that Detective McCready was alleged to have committed perjury, that would have been a serious concern for you, right?

A. Yes, the allegation, if it was sustained and convicted, I don't think he would have been there.

Q. If you had been made aware that the allegation had been publicly made about him that he had committed perjury, lied under oath, you would have personally kept him on a very short leash, right?

MR. DUNNE: Object to the form of the question.

Go ahead and answer that as best you can.

A. If I had known that I would be a little bit more concerned and I would pass that along to his immediate supervisor and



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

132

1 J. McELHONE

2 say, hey, keep an eye on Jim, make sure --

3 Q. You'd make sure he was watched  
4 like a hawk?

5 A. As a matter of fact, I had a  
6 personal sit-down with him and the four people  
7 I mentioned to you. When I went in in '87, I  
8 had this discussion with Inspector Murphy,  
9 everybody was walking on eggshells, the four  
10 remaining, because everybody else is going,  
11 here comes a new guy in, this is the second  
12 lieutenant in three months, you know, what is  
13 going on here, new sergeants are coming in the  
14 door every day. So they were concerned about  
15 what their future was in the homicide squad.

16 So I sat down with Jim and I told  
17 him, you know, you've got to take notes, I  
18 know that was one of your problems there. And  
19 he didn't offer up any other explanation that  
20 you are asking. You know, you have to do what  
21 you got to do and we're going to do a more  
22 team concept here, you are going to work for  
23 your sergeant directly, no freelancing, no "I  
24 got an idea, let me go pursue this." And I  
25 had the same conversation with Bill Donohue,



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

133

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Jackie Miller and Mike Ryan was actually more of the day man at that point, he was reduced to pretty much doing administrative tasks. I don't know if we had to have that talk.

Q. So one of the messages you gave to Jim McCready was you got to take notes?

A. Yes.

Q. You got to take thorough, accurate, contemporaneous notes?

A. Exactly.

Q. You got to keep them?

A. Yes.

Q. You got to do the same with your report?

A. Yes.

Q. You also give him the message you can't be going off on your own, you got to communicate with your team.

A. Yes.

Q. You got to keep your supervisor in the loop?

A. Yes.

Q. You can't be a lone ranger out there?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

134

1 J. McELHONE

2 A. Exactly.

3 Q. Did you ask him if he had been the  
4 subject of any investigations?

5 A. No.

6 Q. Did you ask him if he was the  
7 subject of any SIC hearings?

8 A. No.

9 Q. Did you ask him if he testified?

10 A. No. I had known from Inspector  
11 Murphy his name was mentioned. I don't know  
12 if he testified or not. To this date I don't  
13 know if he testified or not. But it was the  
14 way it was explained to me, it was a serious  
15 mistake but it was all attributable to his  
16 failure to take notes and made a mistake then  
17 when he was testifying and that, you know, he  
18 thought he did something when he didn't do  
19 something, and that had he taken enough notes,  
20 he would have certainly remembered that.

21 Q. You understood it was a serious  
22 mistake, but nothing more?

23 A. Yeah.

24 Q. And you didn't ask either him or  
25 Deputy Inspector Murphy if there was any more



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

135

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

serious allegation out there about Jim  
McCready?

A. I asked overall, over the whole  
squad, is there anyone there that shouldn't be  
here right now, is there anyone there with an  
internal affairs case pending or something  
going on in the DA's office or the SIC.

And he said no, it is pretty -- it  
has been taken care of at that point. People  
who had to leave, left.

Q. So you were told by Deputy  
Inspector Murphy as of February of 1987 or  
so --

A. Um-hum.

Q. -- there were no open  
investigations either by the SIC, the DA,  
internal affairs of McCready?

A. I didn't -- I wasn't that  
specific.

Again, going back into what I said  
earlier, is there anybody here that has to go.  
Because ,again I was under the -- I was never  
in headquarters before. All I was getting was  
from the newspapers or what was said on



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

136

1 J. McELHONE

2 television or scuttlebutt from people walking  
3 by. So I wasn't sure on any of the others  
4 that were still there, or maybe somebody was  
5 only there for a short term who has a domestic  
6 problem who shouldn't be there or a drinking  
7 problem that shouldn't be there. That is  
8 something a new commanding officer would ask  
9 of anybody, you know, who do I have to look  
10 out for, you know.

11 Q. If a detective had fabricated  
12 information on a police report, that officer  
13 needs to go, right?

14 A. An out-and-out fabrication, yes.

15 Q. If an officer lied under oath,  
16 that officer needs to go, right?

17 A. If, in a case if it is not a  
18 mistake, yeah, it would be a problem.

19 Q. An officer who in the past had  
20 lied under oath, has no business interrogating  
21 a suspect, right?

22 A. If he is in the squad, he  
23 shouldn't be interrogating a suspect.

24 Q. Well, an officer who has lied  
25 under oath shouldn't be on the squad at all,



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

137

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

right?

A. If it is a perjury case, yes.

Q. An officer who has fabricated a police report shouldn't be on your squad at all?

A. Out-and-out fabrication, you are correct, should not be there.

Q. And you don't want that officer interrogating a suspect?

A. Wouldn't be in the squad. He wouldn't be interrogating.

Q. Did you satisfy yourself that there was no question about whether Jim McCready had made a mistake or intentionally lied?

A. I never directly asked him about it. I was told that there was no one there that had a problem that didn't -- that shouldn't be there. So I went in with that premise.

Q. Did you press either Jim McCready directly or Deputy Inspector Murphy on the nature of this mistake?

A. No.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

138

1 J. McELHONE

2 Q. You took him at his word?

3 A. I wasn't aware of it actually  
4 until I read the entire report here preparing  
5 for this.

6 Q. You weren't aware of what until  
7 you read the report?

8 A. That he made a mistake in  
9 identification process and I think it was the  
10 Diaz case.

11 Q. So all you knew from your  
12 conversations with McCready and Murphy was  
13 that he made a mistake in connection with  
14 note-taking?

15 A. A mistake that was directly  
16 attributable to his failure to take adequate  
17 notes or any notes in that situation.

18 MS. CORNWALL: I think now is a  
19 good time for a lunch break.

20 MR. DUNNE: Okay.

21 (Lunch recess: 12:50 p.m.)  
22  
23  
24  
25



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

139

J. McELHONE

A F T E R N O O N S E S S I O N

1:55 p.m.

J O H N M c E L H O N E,

having been previously duly sworn, was  
examined and testified further as  
follows:

CONTINUED EXAMINATION

BY MS. CORNWALL:

Q. So we spoke this morning, Mr.  
McElhone, about some of the fundamentals of  
investigation. Do you remember those  
questions?

A. Um-hum.

Q. And giving those answers  
generally?

A. Yes.

Q. I would like to ask you a couple  
more questions about basic investigative  
practice.

A. Okay.

Q. -- in 1988. One of the things  
that detectives under your command did, both  
in the other squads and in homicide, was  
identification procedures. Right?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

140

1 J. McELHONE

2 A. Um-hum. Yes.

3 Q. Either involving, showing  
4 photographs or live subjects --

5 A. Lineups.

6 Q. -- to a witness in a lineup.

7 A. Yes.

8 Q. And would you agree that it was  
9 critically important that any time an officer  
10 conducted an identification procedure with a  
11 witness or a victim of crime, that the fact  
12 that the procedure was done, be documented in  
13 a report?

14 A. Yes, I would.

15 Q. And was it also standard procedure  
16 that detectives were to avoid engaging in  
17 procedures that were unduly suggestive?

18 A. Yes.

19 Q. Meaning, procedures that would  
20 telegraph to the victim or witness, this is  
21 the suspect we want you to pick. Right?

22 A. That would be improper.

23 Q. That would be improper and  
24 detectives in 1985 and on, were well aware of  
25 that, right?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

141

1 J. McELHONE

2 A. '82 when I was a detective  
3 sergeant, certainly.

4 Q. And likewise, in the event that an  
5 officer conducted an unduly suggestive ID  
6 procedure, they still had to document that  
7 procedure in a report, right?

8 A. Yes.

9 Q. Because the fact that the  
10 procedure was unduly suggestive is an  
11 important factor in assessing whether the ID  
12 is reliable?

13 A. That's correct.

14 Q. And one of the specific rules  
15 about ID procedures was, was it not, that  
16 there were limits on when you could show a  
17 single photo to a victim or witness, right?  
18 Showing a single photo, unless there was an  
19 exigent circumstance, was unduly suggestive,  
20 right?

21 A. Exigent circumstances are  
22 confirmatory if you think somebody already  
23 knows who you are talking about. You might  
24 say I want to be sure this is the person.

25 Q. But only when you have evidence



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

142

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

that the person knows the suspect already?

A. Yes, yes.

Q. Generally speaking, unless it is immediately after a crime, or a victim is in a hospital, the proper course is to prepare a photo array or a photo spread, right?

A. Depending on the circumstances, that would be the ideal situation.

Q. And under what circumstances would it be acceptable not to prepare a photo spread if you are going to do an ID procedure that is not immediately after a crime or to a victim in a hospital?

A. When you wouldn't want to do it?

As I said before, if you just want confirmation that this is the person you are already talking about, that this person knows who they are identifying as John Doe, this is the John Doe you are talking about.

Q. And hypothetically, if an officer is going to do an ID procedure with a witness and has not yet spoken with that witness, doesn't yet know whether the witness knows the suspect or not, the appropriate procedure



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

143

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

would be to prepare a photo array or a photo spread, right?

A. That would be the ideal situation.

Q. You wouldn't go without with just a mugshot of somebody unless you already knew that the witness knew the suspect, right?

A. That would be correct.

Q. Otherwise, it would be an unduly suggestive identification procedure?

A. If you are identifying an unknown subject by only showing one photo, that would be improper.

Q. And until you have good reason to believe that the suspect is known to the witness, you have to use a photo array, photo spread?

A. That would be the ideal situation.

Q. That would be the appropriate procedure?

A. Yes.

Q. And if a witness provides information that is documented in a police report and the police officer later learns that information is inaccurate, would you



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

144

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

agree the officer had in 1985 and onward, a Brady obligation to document the inconsistent information?

MR. DUNNE: I'll object to the form. Go ahead and try to answer it as best you can.

A. Can you repeat that again.

Q. Sure. Let me do it a little differently.

In a case where a witness makes a statement that is documented in a police report?

A. Okay.

Q. And upon further investigation the detective learns that an important element of the statement is wrong or inconsistent?

A. Inconsistent, uncorroborated.

Q. Inconsistent with the objective evidence.

A. Okay.

Q. That officer has an obligation to document the inconsistency, right?

A. Yes.

Q. It is Brady material?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

145

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

A. Yeah.

Q. And that was true in '85, '86, '87, '88, right?

A. Sure.

Q. Please take a look at what we have marked as Exhibit 13.

(Plaintiff Exhibit 13, January 29th, 1987 article from The New York Times entitled Suffolk Police Are Described As Deficient marked for identification, as of this date.)

Q. This is a January 29th, 1987 article from The New York Times entitled Suffolk Police Are Described As Deficient. Do you see that?

A. Yes.

Q. And it is an article reporting on the progress of the state commission of investigation, the first day of the public hearings, right?

A. Okay.

Q. Do you see that in the first two paragraphs?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

146

J. McELHONE

A. In the second paragraph, starts  
"in the first day of public hearings"?

Q. Yes.

A. Okay.

Q. So let's just read it together.  
The first two paragraphs the  
articles say, do they not, quote:

"The chairman of the state  
commission of investigation said today  
that the Suffolk County Police  
Department had displayed a, quote,  
startling lack of professionalism. End  
quote. A 14-month investigation, he  
said he found evidence of perjury and  
fabrication of evidence by the police.  
In the first day of public hearings on  
charges of corruption and mismanagement  
in criminal justice agencies here, the  
commission chairman David G. Trager also  
said the problems in the department  
were, quote, shamefully tolerated by the  
district attorneys office." End quote.

Did I read those paragraphs  
accurately?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

147

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

A. Yes.

Q. As you sit here today, you were aware of these allegations on the eve of your taking command of homicide, weren't you?

A. Yes.

Q. Did you read this story back then when it was published?

A. I don't recall. It was such an avalanche of material around that time.

Q. There was an avalanche of material reporting on allegations of perjury and fabrication of evidence by the Suffolk County detectives at that time, right?

A. Those allegations were being made, yes.

Q. In an avalanche of news reports, to use your words?

A. Yes.

Q. And you were well aware of them on the eve of your taking command of homicide?

A. Yes.

Q. And once you learned you were to be taking command of homicide, these allegations became of particular importance to



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

148

1 J. McELHONE

2 you, right?

3 A. Yes.

4 Q. Because they would be your  
5 problem?

6 A. Talked about in my command.

7 Q. Right. Turning to the second  
8 page, the third paragraph, second sentence  
9 reports, quote:

10 "But Mr. Trager added, the top  
11 management of these agencies must be  
12 held accountable for creating the  
13 atmosphere allowing misconduct first to  
14 occur, and second, to go unpunished."  
15 End quote.

16 Do you see that?

17 A. Yes.

18 Q. Do you agree that for the Suffolk  
19 County Police Department it is the  
20 responsibility of top management to create an  
21 atmosphere where misconduct is not allowed?

22 A. Yes.

23 Q. Do you agree that it is the  
24 responsibility of top management at the SCPD  
25 to make sure that misconduct is punished?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

149

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

A. Yes.

Q. And as the CO of homicide when you assumed command after this story was published, would you agree you're part of that top management?

A. Middle to top, yeah. I'm part of the management team.

Q. And you would agree, would you not, that it was part of your job to create an atmosphere in which misconduct was not allowed?

A. That's correct.

Q. Do make sure misconduct did not go unpunished?

A. Yes.

Q. And therefore to identify misconduct when it happened?

A. Yes.

Q. It was part of your job when you took command to identify problem officers, right?

A. Define problem officers.

Q. What was a problem officer for you?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

150

1 J. McELHONE

2 A. Different categories: obnoxious,  
3 hard to get along with. You know, you are  
4 dealing with human personalities here.

5 Q. Sir, when you had the meeting with  
6 Deputy Inspector Murphy and you asked him did  
7 any of the holdover officers need to go --

8 A. Right.

9 Q. -- you were asking about whether  
10 you had a problem officer on your hands,  
11 right?

12 A. More serious than that. Not  
13 personality problems like I just described.

14 Q. And that's what we are here today  
15 talking about, more serious problems --

16 A. Yes.

17 Q. -- not personality differences.

18 A. Right. That's what I was asking  
19 about.

20 Are they under suspicion, are they  
21 being investigated by internal affairs, is  
22 there something in the SIC report which I  
23 hadn't read which would indicate that somebody  
24 has to go or discussions with the District  
25 Attorney's office that someone has to go.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

151

1 J. McELHONE

2 Q. That was important information for  
3 you to know about those under your command?

4 A. Certainly.

5 Q. Particularly those officers who  
6 were in homicide during the years leading up  
7 to your taking command during which time the  
8 avalanche of allegations about perjury and  
9 fabrication were being reported?

10 A. Yes.

11 Q. You said earlier it was a crazy  
12 time.

13 A. Yes.

14 Q. Between '85 and '87 when you --

15 A. There was a lot of movement of  
16 people, there was a lot of press reports about  
17 problems with the police department and  
18 Confession Takers and all of that was -- every  
19 day you could read something about it.

20 Q. And there was talk within the  
21 department too, wasn't there?

22 A. Yes.

23 Q. A lot of concern?

24 A. Yeah.

25 Q. What was the talk in the



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)



John McElhone

December 2, 2011

152

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

department while these investigations were going on, these reports are being made?

A. Some of it was that we thought it was a witch hunt in certain areas, and others were that, you know, that they have uncovered some problems here that we have to address.

Q. Which camp are you in?

A. I took them all on a balance type thing.

Q. Well, did you believe there was a witch hunt or did you believe --

MR. DUNNE: No, I think he was distinguishing between sections of it, I don't think it is an either/or.

MS. CORNWALL: Let me ask and we will clarify the answer.

A. You are talking about the entire atmosphere at the time.

Q. Okay.

A. I remember that the county legislature jumped in to form some kind of committee to call people into and I remember that there were some people with axes to grind with the police department that weren't



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

153

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

really, didn't sound like they were legitimate that they were just a forum for people to come forward and criticize the department.

Q. Given your reading the avalanche of allegations in the press and your awareness of the public hearings in the SIC and the other entities investigating the department, did you believe there was some basis for concern, or did you, too, believe it was all a witch hunt?

A. No, it was not all a witch hunt. There was cause for concern.

Q. And specifically was there cause for concern that homicide detectives had been coercing confessions?

A. When jurors were being polled and said they did not believe police witnesses, that was certainly an area I was concerned about.

Q. That was a very serious concern?

A. Yes, yes.

Q. And when sitting judges are making allegations that detectives have committed perjury before them in testimony, that is also



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

154

1 J. McELHONE

2 a very serious concern?

3 A. Absolutely.

4 Q. That's not a witch hunt?

5 A. No.

6 Q. And if it had come to your  
7 attention when you assumed command of homicide  
8 that a sitting judge had made allegations of  
9 perjury against any one of the officers still  
10 in homicide when you took over, you should  
11 have taken a very close look at that  
12 allegation, right?

13 A. Yes.

14 Q. And you should have investigated?

15 A. I wouldn't reinvestigate it. If  
16 he is still in homicide and I was told that  
17 nobody really had to leave at that point  
18 because whatever allegations were made, were,  
19 I assumed, investigated and cleared, then it  
20 would be more of a telling their supervisor,  
21 like, you used the term short leash before,  
22 keep an eye on Jim or Jack or whoever it would  
23 have been.

24 Q. And you were relying on Deputy  
25 Inspector Murphy?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

155

1 J. McELHONE

2 A. He was previously assigned there  
3 just before I got there.

4 Q. And how long was his tenure there?

5 A. I don't think it was that long,  
6 maybe less than a year, but several months  
7 before I got there.

8 Q. And you were also relying on the  
9 self-reporting of the four holdover officers  
10 to tell you if they had been accused of  
11 anything or if there were any problems?

12 A. I didn't ask them. I just wanted  
13 to make clear that I have been told at this  
14 point there is no reason to ask any of you to  
15 leave, but I want to make it clear to you that  
16 now that I'm the CO, we are going to have  
17 training, we are going to have the sergeants  
18 being a very lead role in all homicide cases,  
19 there will be note-taking, scrupulously taking  
20 notes on everything that is done and we're  
21 going to do it by the book.

22 Q. Now, if you believed there was no  
23 cause for concern about investigative  
24 misconduct by any of the four holdovers, why  
25 do you need to tell them any of those things.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

156

1 J. McELHONE

2 I was told that they are walking on eggshells.  
3 All of the rest of their peers during that  
4 period have been asked to leave or left on  
5 their own or have been transferred out and at  
6 this point they are walking on eggshells?

7 Q. What did that mean to you, when  
8 you heard they are walking on eggshells?

9 A. They are not sure of what their  
10 career status was with the police department  
11 at that point. So I wanted to make it clear  
12 to them that I have been told that there is  
13 not a problem, that you won't be leaving  
14 unless I ask you to leave and that this is  
15 what we are going to do from this day forward.

16 Q. What reaction did you get from  
17 Detective Miller when you had this sit-down  
18 with him?

19 A. With all of them I can't remember  
20 exactly what it was, but they were all right  
21 on board, no problem, absolutely.

22 Q. Same reaction from McCready?

23 A. Yes.

24 Q. Same reaction from Ryan?

25 A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

157

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. Same reaction from Donohue?

A. Yes.

Q. They are on board?

A. Absolutely.

Q. And you didn't ask anyone of the four of them if they had ever been accused of perjury for example?

A. No.

Q. You didn't ask any one of the four of them whether they had ever been accused of fabricating evidence?

A. No.

Q. Withholding Brady material?

A. I wasn't in internal affairs at that point. I was their commanding officer just letting them know that I have been told there is not a problem, that your tenure here is safe as long as you do things the way I'm going to do them from here on.

Q. Let's time out for a moment. You just said you weren't internal affairs?

A. Right.

Q. But it was your job as the new



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

158

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

commanding officer of homicide with a mandate to clean up the department, to make sure you didn't have problem officers?

A. Not the department.

Q. The squad?

A. Yes.

Q. You had a mandate to clean up?

A. Not to clean it up. At this point people who had to leave had left. We have a training session coming on board this week, we are going to go forward with the homicide squad with the personnel that are here, unless I had a problem with them, and we're going to train them, we are going to work with the DA closely, we're going to -- the sergeants are going to take the lead in all homicide cases, they will assign lead detectives, they will assign scene people, and there will be no running off on your own to pursue something.

Q. I want to be very clear that I'm understanding you.

It was not only internal affairs who had an interest in investigating investigative misconduct by homicide



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

159

1 J. McELHONE

2 detectives, right? That mattered to you too?

3 A. It could have. It could have been  
4 any way. That's why I asked the question I  
5 did from the CO of major crime bureau, is  
6 there a problem with anybody here. I wasn't  
7 focusing directly on the four that were there  
8 for the longest. If somebody was there for a  
9 year, might have had a problem.

10 Q. Anyone who is a holdover?

11 A. Yes, and it didn't have to be  
12 criminal or perjurer. It could have been, he  
13 is lazy or he has taken a lot of sick time or  
14 something like that. I was looking for an  
15 assessment, what's the staff you are giving me  
16 here and where do I proceed from here.

17 Q. And it was critically important  
18 that you knew you could rely on the  
19 representations your homicide detectives made  
20 to you?

21 A. My new boss made the first  
22 representation. After that I made my own  
23 decisions.

24 Q. So fair to say you completely  
25 relied on your boss's assessment of the four



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)



John McElhone

December 2, 2011

160

1 J. McELHONE

2 holdovers?

3 A. Yes. He came from, he is very  
4 well-respected by me and others and he had  
5 experience hands-on with that squad for months  
6 before I got there.

7 Q. So while you considered it part  
8 your role to know if you had any problem  
9 officers?

10 A. Yes.

11 Q. You were satisfied with what you  
12 heard from Deputy Inspector Murphy?

13 A. That's correct.

14 Q. And you looked no further?

15 A. I had no reason to.

16 Q. If something came to your  
17 attention, a plausible allegation that any one  
18 of your homicide detectives had engaged in  
19 investigative misconduct, you should have  
20 investigated that personally, right?

21 A. Yes.

22 Q. And you would have?

23 A. There is a procedure with everyone  
24 in the police department, from beat cop on up.  
25 If a civilian makes a complaint or anyone



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

161

1 J. McELHONE

2 makes a complaint, it is recorded, it is given  
3 a number, it is forwarded, you run it by  
4 internal affairs. It might be something  
5 serious enough where they want to devote full  
6 energy to do it. If not, they kick it down to  
7 the command level basically and it would be  
8 brought to my attention. I might handle it  
9 personally or I might give it to one of my  
10 sergeants who was day-to-day supervision over  
11 the detectives there and they would have to  
12 interview the detective, get a report from him  
13 about the incident and it is all handed back  
14 to me and up to internal affairs,  
15 substantiated, unsubstantiated, cleared.

16 Q. Did you ever hear of an internal  
17 affairs investigation of a homicide detective  
18 that was substantiated?

19 A. I never did, no.

20 Q. Internal affairs -- I'm sorry,  
21 that's during your entire career, right?

22 A. Homicide detective? No, I never  
23 did.

24 Q. Never heard of a substantiated  
25 internal affairs --



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

162

1 J. McELHONE

2 A. I would only for the two years I  
3 was there as deputy chief or anything like  
4 that.

5 Q. But during your 3-1/2 decades on  
6 the force, is it fair to say you are not, as  
7 you sit here today, aware of any internal  
8 affairs case against a homicide detective that  
9 has been substantiated?

10 A. Correct.

11 Q. Now, internal affairs  
12 investigations can take a number of years to  
13 go from complaint to conclusion, right?

14 A. I imagine so.

15 Q. Well, that's your experience as a  
16 commanding officer who is aware of  
17 investigations pending against officers within  
18 your command, right?

19 A. There is actually an 18-month  
20 statute of limitations for internal discipline  
21 in all of the contracts between the unions and  
22 the police department. So anything that went  
23 more than that would really be, I guess when  
24 they initiate the complaint, they can take as  
25 long as they have to to investigate it, but I



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

163

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

have never heard of anything taking a couple of years.

Q. So an investigation needs to be initiated within 18 months of the alleged misconduct?

A. Yes.

Q. And then would be investigated sometime thereafter?

A. Right.

Q. So if a complaint, investigation is initiated 18 months after the conduct, could very easily be more than a couple of years before you have a result?

A. It would be an internal affairs type case, because as a CO we wouldn't get cases that went that far. It would have been more, officer was rude or detective was, you know, did something improper that was not serious enough to go through a long investigation with the internal affairs section.

Q. Mr. McElhone, given that internal affairs investigations can take some time and given your testimony earlier that it was



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

164

1 J. McELHONE

2 important for you to know that you could rely  
3 on your detectives to accurately report their  
4 conduct to you, you wouldn't just leave it to  
5 internal affairs if it came to your attention  
6 that there was an allegation of serious  
7 investigative misconduct by a homicide  
8 detective, would you?

9 MR. DUNNE: I'm objecting to the  
10 form of that question. That is more of  
11 an allegation. But go ahead and try and  
12 answer that as best you could.

13 A. I don't know that I would know the  
14 details of it. I would expect, and I think  
15 this happened in other occasions that on its  
16 face it would be serious enough an allegation  
17 that they're going, you know, while we are  
18 investigating this I think it would be better  
19 to reassign that detective to either a day job  
20 where he is not taking in new cases, or maybe  
21 even another squad.

22 I know it has happened in patrol  
23 many times that way.

24 Q. So the pendency of an internal  
25 affairs investigation wouldn't stop you --



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

165

1 J. McELHONE

2 A. I would not investigate while they  
3 are investigating.

4 Q. But you would still make sure you  
5 can rely on the word of an officer?

6 MR. DUNNE: I'm going to object.  
7 What does that mean? He just said he is  
8 not doing an investigation, I don't  
9 understand the question.

10 MS. CORNWALL: You can state an  
11 objection if you have one.

12 MR. DUNNE: Right.

13 A. Could you repeat the question.

14 Q. You testified earlier it is  
15 important for you to be able to rely on the  
16 truthfulness of detectives, right?

17 A. Yes.

18 Q. If you had cause to question  
19 whether you could rely on the word of an  
20 officer, wouldn't you take steps, isn't it  
21 your job to take steps to determine whether  
22 that officer is trustworthy?

23 A. Yes. I'd either talk to the  
24 officer or talk to his boss for sure.

25 Q. And that's completely independent



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

166

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

of any internal affairs investigation?

A. Yes.

Q. That may or may not be?

A. Sure.

Q. You testified earlier I believe that officers felt in homicide as though people were looking over their shoulders. Do you recall?

A. There was a media scrutiny for sure. There was certainly departmental scrutiny, yeah.

Q. Did you feel that way?

A. I just got there. I didn't feel that way. I knew it was a very visible position even before the controversy.

Q. And with the avalanche of allegations and the avalanche of critical press making these allegations about systemic misconduct in the homicide bureau, fair to say you were under some pressure?

MR. DUNNE: I'm going to object to the form of the question. Go ahead and answer that as best you can.

A. It comes with the territory. I



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

167

1 J. McELHONE

2 knew what I was getting into.

3 Q. So you did feel some pressure?

4 A. Nothing extraordinary, but I knew  
5 whatever I did was being looked at and  
6 whatever the squad did was being looked at.

7 Q. Being looked at by the media?

8 A. Yes.

9 Q. Being looked at by the SIC which  
10 was still going on?

11 A. I didn't feel that. I think they  
12 were looking at past events and what they did  
13 and looked at, they did and looked at.

14 Q. Past events, including conduct by  
15 officers who were still on the force when you  
16 took command, right?

17 A. Yes.

18 Q. You knew you would be subjected to  
19 scrutiny by the Suffolk County legislature  
20 which had its own hearings going on?

21 A. Again they were looking into past  
22 details. I didn't feel pressure from that.

23 Q. You felt no pressure from that?

24 A. No.

25 Q. How about the US Attorney



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

168

1 J. McELHONE

2 investigation that was ongoing?

3 A. I'm not even aware of that.

4 Q. Turning back to Exhibit 9, the  
5 letter from Judge Namm that prompted the  
6 formation of the SIC.

7 A. Um-hum.

8 Q. Turning to the second page, the  
9 third full paragraph says, quote:

10 "In two consecutive highly  
11 publicized murder trials, I have  
12 witnessed, among other things, such  
13 apparent prosecutorial misconduct as  
14 perjury, subornation of perjury,  
15 intimidation of witnesses, foliation of  
16 evidence, abuse of subpoena power and  
17 the aforesaid attempt to intimidate a  
18 sitting judge."

19 Namm at the time was a sitting  
20 judge, right?

21 A. Um-hum. Yes.

22 Q. And he goes on to say that members  
23 of the -- in the next paragraph it says:

24 "As this letter was being drafted,  
25 the defendant, James Diaz, was acquitted



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

169

1 J. McELHONE

2 of murder and rape. Members of the  
3 jury, as did the jury in the Peter Corso  
4 case, the previous murder trial, have  
5 publicly and openly criticized the  
6 Suffolk County Police Department, the  
7 manner in which they conducted their  
8 investigation and the manner in which  
9 the case was prosecuted by the Suffolk  
10 County District Attorney's Office."

11 Do you see that?

12 A. Yes, ma'am.

13 Q. And you knew when you assumed  
14 command, a year and a half or so later, that a  
15 sitting judge had alleged homicide detectives  
16 had committed perjury?

17 A. That second -- the first paragraph  
18 you read said prosecutorial misconduct is  
19 perjury.

20 Q. Well, prosecutors don't testify,  
21 right? They put on the case.

22 A. Okay.

23 Q. And they put on homicide  
24 detectives to testify?

25 A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

170

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. In homicide cases?

A. Um-hum.

Q. So you were aware, were you not, that a sitting judge had alleged homicide detectives had committed perjury?

A. Yes.

Q. You were aware of the allegation, right?

A. Yes.

Q. Which you had to take very seriously if any officer was still under your -- was still in the homicide unit when you took over in 1987?

A. I would be concerned by then, yeah.

MS. CORNWALL: Let's mark this.

(Plaintiff Exhibit 14, February 2, 1987 New York Times article entitled Long Island Trial is Scrutinized Two Years After Verdict marked for identification, as of this date.)

Q. We've marked as Exhibit 14, a February 2 of 1987 New York Times article



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

171

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

entitled Long Island Trial is Scrutinized Two  
Years After Verdict. Do you see that?

A. Yes.

Q. And if you take a minute to review  
the piece, it is about the 1985 trial of James  
Diaz, right?

A. Yes.

Q. The same case Judge Namm had  
referred to in his letter to the governor  
alleging that there had been perjury in trials  
before him, right?

A. If that's what it says, yes.

Q. Well, take your time and look.

A. Okay.

Q. And make sure that you are  
confident that the trial of James Diaz  
referred to in the 1987 story is the James  
Diaz case that Judge Namm was referring to  
that he was so concerned about that he wrote  
to the governor asking for an independent  
investigation of perjury in the police  
department.

It is a story referring to an  
acquittal of James Diaz in a 1985 trial,



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

172

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

right?

A. Yes.

Q. And the SIC in 1987 is holding public hearings about the police conduct during that trial and investigation, right?

A. Right.

Q. And toward the bottom of the second page of the exhibit, the piece reports, quote:

"The judge, Stuart Namm, not only questioned the credibility of the informer, but also said he found a, quote, good part of the testimony, unquote, from the police detectives to be, quote, not credible." End quote.

Do you see that?

A. Yes.

Q. This is Judge Stuart Namm, a sitting judge, alleging that detectives --

A. He didn't use the perjury word.

Q. He didn't use the perjury word there in this particular quote, did he?

A. No.

Q. But that's what he is talking



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

173

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

about, right?

A. He said it was not credible and I believe jurors also said they had problems believing what the detectives were saying.

Q. Right. And this is a news story that came out within a couple of weeks before you assumed command, February 2?

A. January 30th, yes.

Q. February 2 of 1987?

A. I see the byline. It says Hauppauge, January 30th.

Q. Within a couple of weeks?

A. Yes.

Q. So the conduct of the Diaz investigation and trial, was a live issue still when you took command?

MR. DUNNE: For whom?

A. Yeah.

MR. DUNNE: For whom?

Q. And because a sitting judge is accusing homicide detectives, who are still on the force now under your command, of fabrication and evidence of perjury, that is a problem you need to look into, right?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

174

1 J. McELHONE

2 A. Not necessarily. He is talking  
3 about, he is making -- I knew he wrote a  
4 letter to the state. I knew SIC was coming  
5 down and having hearings. I knew this  
6 credibility question was in question.

7 I went -- I had a job to do. I  
8 worked for the police department. I went to  
9 my new boss on my new assignment and said is  
10 there anything here I have to do. He didn't  
11 say you have to investigate everything these  
12 guys have ever done. He didn't say -- he told  
13 me everybody who had to leave is gone. The  
14 guys you have now, we won't have a problem.

15 I said, okay, I went with that and  
16 then I was going to make my own assessment on  
17 my tenure of anything that happened along the  
18 line.

19 Q. With your education and your  
20 experience and your -- the seriousness with  
21 which you took your posting, that's really all  
22 you did?

23 MR. DUNNE: I will object to the  
24 form. I'd ask you to restate the  
25 question. I'm objecting to the form of



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

175

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

that so that we can get an answer.

MS. CORNWALL: You don't get to pick the form of my question. You get to make your objection and leave it at that.

Please answer the question.

MR. DUNNE: It is an improper question.

A. No one gave me any information or any cause to investigate any of the officers that I was taking command of for one day.

Q. This news story didn't give you pause?

A. I don't recall reading the Times on this one. Again, there was an avalanche of these things.

Q. There was an avalanche.

A. There was spurious ones, there was serious ones. I was trying to wade through it like everybody else was, and the easiest way, and most direct way was for me to look my boss in the eye and say, is there anybody here I have to worry about, is there any problems here I have to, before I start sitting down



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

176

1 J. McELHONE

2 with them, we move them along somewhere.

3 Q. And were you aware that McCready  
4 was one of the --

5 A. I heard his name was mentioned.

6 Q. May I finish the question, please.

7 A. Certainly.

8 Q. Thank you. You heard that  
9 McCready's name had been mentioned in  
10 connection with perjury allegations from the  
11 Diaz trial?

12 A. I did not hear perjury  
13 allegations.

14 Q. You never heard --

15 A. No.

16 Q. -- McCready and allegations of  
17 perjury in the same breath?

18 A. No.

19 Q. What did you hear about him?

20 A. It was part of The Confession  
21 Takers syndrome where they were focusing  
22 solely on confessions that there was a serious  
23 lack of note-taking, of possibly shortcuts in  
24 the criminal investigation. And that was  
25 going to stop with McCready or anybody else



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

177

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

that was in the detective squad at that time.

Q. Where did you hear that about him, from whom?

A. From the various reports of the news media and from my boss and from the detective division in general, I was still a lieutenant in charge of a squad, if there was the homicide in the Fifth Squad, there would be a homicide detective and a team coming in and they we would talk about it in case there was something locally that we could contribute to their investigation?

Q. So you heard about Detective McCready from before you joined homicide?

A. Yeah, that he was one of the names that was mentioned in the SIC investigation.

Q. As someone who relied too much on confessions?

A. It was kind of a lump them altogether with the whole group that was up there was doing that.

Q. But McCready, in particular, was someone who came to your attention as relying too much on confessions?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

178

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

A. He was one of the names that was involved with the other ones that were Rafferty and all the other names that were involved with that SIC investigation.

Q. And specifically the SIC investigation of the Diaz case?

A. I heard that -- I don't remember hearing his name attributed to that one. It was more Rafferty with the second knife thing that troubled me when I heard that.

Q. So you were aware that there were allegations against Detective Rafferty?

A. Yes.

Q. Explain your understanding of the second knife thing, if you would.

A. From news reports again I found out that there was a -- there was one knife recovered in the homicide investigation and several days or maybe weeks later, the ex-husband moves back into the house and he finds a knife discarded in the den that should have been recovered with a good crime scene. And one of the things that came out of that was a finger-pointing between the lab and the



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

179

1 J. McELHONE

2 homicide squad, that homicide squad -- the lab  
3 through the ME's office is responsible for the  
4 crime scene. And the lab people said, no, we  
5 process it for physical evidence. We don't  
6 really search the scene.

7 And because of that, one of the  
8 first things I did when I came on board again  
9 with the lab, with the DA and homicide bureau,  
10 we had several sit-downs on who was actually  
11 going to do what in crime scenes. And that  
12 second knife theory was something we  
13 addressed. Homicide squad will be responsible  
14 for the entire crime scene search. ID and the  
15 ME's office will be responsible for the body  
16 and any processing of serology or other  
17 physical evidence at the scene.

18 Q. Was Detective Rafferty still in  
19 homicide when you joined?

20 A. No.

21 Q. Why did he leave?

22 A. I couldn't tell you.

23 Q. Was it in connection with the SIC  
24 allegations?

25 A. I'm sure that was a factor, but I



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

180

1 J. McELHONE

2 don't know for sure.

3 Q. How did you learn about the whole  
4 second knife thing to be able to make policy  
5 changes as a result of that?

6 A. I remember reading it in the paper  
7 and then we discussed when I came on board  
8 with the lab people saying, you know, that  
9 let's not point fingers at each other. Let's  
10 decide right now how we are going to address  
11 crime scenes.

12 Q. You learned about the second knife  
13 problem from reading the newspaper?

14 A. Yeah, that's probably right; my  
15 best recollection.

16 Q. Any other sources within the  
17 department?

18 A. No.

19 Q. Did you investigate further within  
20 the department what had happened with the  
21 second knife thing and Rafferty?

22 A. That was history as far as I was  
23 concerned at that point. My concern was from  
24 this day forward how are we going to handle  
25 crime scenes. We are not going to point



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

181

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

fingers at each other, who is going to be responsible for what aspect of the investigation.

Q. So I want to make sure I'm understanding accurately. Your main concern about the second knife thing in the Diaz case, was the fact that the murder weapon had not been recovered initially during the initial crime scene search?

A. That was certainly a concern.

Q. Were you aware that a knife had been collected originally?

A. From the newspaper account.

Q. And were you aware that detectives elicited a confession from Mr. Diaz?

A. Again, that was in the article at the time.

Q. You were made aware of it in the newspaper?

A. Yes.

Q. And you were aware from the reporting that the confession said he had thrown the knife into the woods and a knife had been found in the woods?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

182

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

A. If that was in the article, that's where I would get that information. I didn't question anybody or talk to anybody at that point. I'm not even sure where I was working at that point when that case went down.

Q. And that some months later the knife was found inside the house?

A. I remember reading that.

Q. And that was inconsistent with the confession that had been elicited from Mr. Diaz, right?

A. Yes.

Q. And if that had happened under your command, I understand it didn't but if it had happened during an investigation in your command, that would be a serious concern of yours, wouldn't it?

A. Certainly.

Q. That the confession was inconsistent with the physical evidence?

A. That, and the sloppy crime scene search where he didn't uncover it in the first place.

Q. But the sloppy crime scene search



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

183

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

wouldn't have been your only concern, would it?

A. No, it wouldn't. The two of them would be troubling.

Q. You would be concerned with the reliability of a confession, right?

A. Sure.

Q. If you have a cooperating suspect who is telling you everything he did in a murder and what he did with the weapon, that's inconsistent with the evidence, you've got to ask yourself if it happened under your command, is this a reliable confession or is it a false confession?

MR. DUNNE: Object to the form of that.

Go ahead and answer that.

A. Your hypothetical that you are getting the exact and total truth from a suspect is not always what happens. Very frequently they will hold something back and just tell you what they think they can tell you and get away with.

But I would be concerned if there



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)



John McElhone

December 2, 2011

184

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

was any aspect of any confession that had a direct piece of evidence that pointed against the reliability of that confession.

Q. So if this confession, if this investigation had happened under your tenure and there is a confession that indicates "I threw the knife in the woods" and months later a bloody knife is actually found inside the house, wouldn't you question whether the confession was true or false?

A. I would question.

Q. And that would be part of your role as the CO?

A. Yeah. Did the defendant lie, did the detective lie, how did it happen that we had misinformation on this.

Q. And you need to make sure the investigation continued, right?

A. Certainly.

Q. So let's take a look at the Diaz confession. Have you ever seen it before?

A. Never have.

(Plaintiff Exhibit 15, Diaz  
confession marked for



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

185

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

identification, as of this date.)

Q. Let's see if we can make out the handwritten script.

Looking to the bottom of the first page, six lines from the bottom, the confession says, quote:

"I also have been sleeping in the Long Island Rail Road cars east of the Port Jefferson railroad station."

Do you see that?

A. Yes.

Q. And then it goes on to say:

"On June 8th of 1984 I've been sleeping in the railroad."

A. Um-hum.

Q. On the second page it goes into detail about entering the victim's house and attacking her and at the very bottom of the second page it says:

"I was scared and when I finished, I ran out the back door into the woods. I threw my gloves in the woods. I also threw the knife in the woods."

A. Um-hum.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

186

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. And there is no signature at the end.

A. Okay.

Q. And Detective Rafferty's name is at the bottom along with the name of Detective James Cassidy as the officers who are interrogating him.

A. I see that.

Q. Cassidy was not still on the homicide squad when you joined, was he?

A. No.

Q. When did he leave?

A. I couldn't tell you.

Q. Why did he leave?

A. I couldn't tell you.

Q. Also something to do with the SIC investigation?

A. I don't know.

(Plaintiff Exhibit 16, supplementary report from investigation dated June 27, 1984 marked for identification, as of this date.)

Q. The Diaz case related to the rape



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

187

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

and murder of Maureen Negus, right?

A. Yes.

Q. You recall that?

A. Yes.

Q. So what I'm showing you, Exhibit 16 is a supplementary report from that investigation. Do you see that?

A. Yes.

Q. And it is a report prepared by whom?

A. James McCready.

Q. And what is the date on the report?

A. June 27, 1984.

Q. Please take a moment and read the whole report to yourself and let me know when you are done.

A. Okay. Okay, I finished.

Q. All right. So in this report it is a report of an interview with three individuals?

A. Employees of the railroad.

Q. Employees of the railroad, right?

A. Um-hum.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

188

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. And is there any indication in Detective McCready's report that you just read, that he showed any photograph to any of those three railroad employees?

A. No.

Q. No documentation that there was any ID procedure done, right?

A. The third paragraph, it said he, too, saw the photo of Diaz. But it doesn't say how that occurred.

Q. So he, too, saw the photo of Diaz, is referring, is it not, back to the second paragraph, Butch Schumel, S-C-H-U-M-E-L, who according to Detective McCready's report, stated that he saw the newspaper containing a photograph of James Diaz and recognized him as being a person who slept in the railroad cars?

A. Yes.

Q. So there is nothing in this report reflecting that Detective McCready did any ID procedure with these witnesses?

A. No.

Q. Nothing to suggest he did a photo array?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

189

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

A. The very last paragraph, another  
sweeper in Coram positively identified Diaz as  
being on the train. There is no reference as  
to how that was done.

Q. So if there was had been a photo  
array, that should have been documented?

A. It would have added clarity to  
that sentence.

Q. If there were a single photo  
showing, that certainly should have been  
documented?

A. Then it would have clarified that  
sentence of how he was identified.

Q. Well, as you testified earlier,  
any time there is any ID procedure conducted,  
it has to be documented in a report, right?

A. Yes.

Q. And it would be procedure to  
document it in the report?

A. Yes, this is significant part of  
the investigation.

Q. It is.

A. Yes.

Q. So if the report is to be accurate



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

190

1 J. McELHONE

2 and thorough, it has to make reference to the  
3 fact of any ID procedure that's done, right?

4 A. Yes. It would be a significant  
5 portion of the investigation.

6 Q. Now, according to the report, none  
7 of these people was in the hospital when they  
8 were interviewed, right?

9 A. I didn't see that in the report,  
10 no.

11 Q. And the identification of the  
12 suspect Diaz by railroad workers would, if  
13 accurate, corroborate that part of the  
14 confession where Diaz says he slept on the  
15 railroad trains?

16 A. Yes.

17 Q. So that's why this report might be  
18 important to the investigation?

19 A. Yes.

20 Q. To corroborate a confession?

21 A. Yes.

22 Q. Because a homicide detective  
23 should always be seeking out corroboration?

24 A. It sounds like two of the  
25 witnesses did say it was Diaz, they recognized



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

191

1 J. McELHONE

2 him. But it doesn't say if it was a photo  
3 spread or -- one says it was from the paper.

4 Q. One says it was from the paper and  
5 the other one says it was also -- he also  
6 recognized Diaz, right?

7 A. Mr. Koerick in the very last  
8 paragraph says he positively identified Diaz  
9 as being on the train, No. 2 west. He thought  
10 he was taller but he saw him when he was  
11 seated.

12 Q. So you are referring to Koerick?

13 A. Yes, the very last paragraph.  
14 (Discussion off the record.)

15 Q. Please take a look at what we will  
16 mark as Exhibit 17.

17 (Plaintiff Exhibit 17, excerpt  
18 of Detective McCready's testimony  
19 from the Diaz trial marked for  
20 identification, as of this date.)

21 Q. This is an excerpt of Detective  
22 McCready's testimony from the Diaz trial?

23 A. Okay.

24 Q. Bottom of page 466, line 17 -- are  
25 you with me?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

192

J. McELHONE

A. Yes.

Q. "Question: Did Mr. Koerick make an identification of Mr. Diaz, did he tell you that he made an identification of Mr. Diaz as a result of a photograph in the paper?

"Answer: Yes."

A. I see that.

Q. "Question: So both Schmel and Koerick told you that?

"Answer: Yes."

A. Yes.

Q. Do you see that?

A. I do.

Q. Thank you. That was a portion of Detective's McCready's testimony at the criminal trial that the ID of Koerick was also from the photograph in the newspaper?

A. Yes.

Q. And that was based on interviews conducted on June 26?

A. Okay.

Q. Do you see that in the report?

A. I see that in the report, yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

193

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. And the report is typed up and signed the next day?

A. I actually -- let me see. Yes. The 27th, yes.

Q. So the report is indicating that two of these three witnesses recognized Diaz from a photograph in the newspaper?

A. Yes.

Q. And there is no indication in this report that McCready did any photo ID procedure whatsoever with any of these three?

A. You are correct, there is no indication.

Q. If he had done any photo ID procedure, it should have been in the report?

A. Yes.

Q. And certainly based on what you know just from reading the report, there would be no justification for bringing them a single photo before he had met with them, right?

A. No, there wouldn't be.

Q. And certainly from the 26th to the 27th, whether or not you take notes, you don't forget in one day, if you have done an ID



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

194

1 J. McELHONE

2 procedure with a witness?

3 A. I can't speak for the detective,  
4 but I wouldn't think so, no.

5 Q. You wouldn't think so, right?

6 A. Right.

7 Q. He is not a very good detective if  
8 he forgets something that material in one day?

9 MR. DUNNE: Object to the form of  
10 the question.

11 Go ahead and answer the best you  
12 can.

13 A. I don't know the context of what  
14 was going on that day so I can't really  
15 comment. I would expect him to do that.

16 Q. You would expect any detective to  
17 remember for a 24-hour period, having shown  
18 photographs or a photograph to a witness --

19 A. Yes.

20 Q. -- whether or not he took notes of  
21 it, right?

22 A. Again, that's speculation.

23 Q. I'm sorry, sir. You don't have to  
24 write -- any detective, in fact, any patrol  
25 officer, doesn't need to write down a note to



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

195

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

remind himself the next day that he did an ID procedure, does he?

A. Shouldn't have to.

Q. Yeah. You are not going to forget that in 24 hours, right?

A. Shouldn't have to.

MR. DUNNE: I will object to the forms of those questions.

Obviously, the answers stand.

Q. Looking at the exhibit which is volume II of III, I believe that is Exhibit 17 -- no, it is going to be 18.

(Discussion off the record.)

MS. CORNWALL: Could you mark that, please.

(Plaintiff Exhibit 18, additional excerpt of Detective McCready's testimony from the Diaz trial, pages 500 to 502 marked for identification, as of this date.)

MS. CORNWALL: 18 is an additional excerpt of Detective McCready's testimony from the Diaz trial, pages 500 to 502.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

196

1 J. McELHONE

2 Q. On page 500, the second page of  
3 the exhibit he is asked at line 6:

4 "Did you show Koerick your mugshot  
5 of Diaz?

6 "Answer: Yes, I did."

7 That's an unduly suggestive ID  
8 procedure, isn't it?

9 A. If Mr. Koerick did not know Mr.  
10 Diaz, obviously it would be.

11 Q. And that is an unduly suggestive  
12 ID procedure that was not documented in  
13 Detective McCready's report, Exhibit 16,  
14 right?

15 MR. DUNNE: Objection. Now we  
16 have to get some clarification. He gave  
17 a qualified answer and you are  
18 assuming --

19 MS. CORNWALL: Fine. Stop  
20 coaching.

21 MR. DUNNE: I'm not coaching.  
22 That is not accurate. Your question is  
23 not accurate based on the last answer.

24 Q. Sir, could you answer the  
25 question?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

197

1 J. McELHONE

2 A. Could you repeat it for me.

3 Q. It is an unduly suggestive ID  
4 procedure, right?

5 A. If Mr. Koerick did not know Mr.  
6 Diaz, then it would be.

7 Q. And it is an ID procedure that was  
8 not documented in Detective McCready's report?

9 A. Well, actually I pointed out to  
10 you there was no reference at all on how  
11 Koerick knew it was Diaz, but we looked at his  
12 testimony where he said it was from the  
13 newspaper.

14 Q. So that's information that should  
15 have been in the report, if he showed a  
16 mugshot?

17 A. Yeah.

18 Q. Yeah.

19 Is there anything in Exhibit 16,  
20 Detective McCready's report, reflecting that  
21 James Diaz's photograph had never been  
22 published in the paper?

23 A. No.

24 Q. If that were the case and  
25 Detective McCready knew it, it should have



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

198

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

been documented in a report, right?

A. Yes.

Q. That would be Brady material?

A. Yes.

Q. It would undermine the reliability of his report?

A. It would correct it for sure.

Q. It would call into question the ID of these witnesses?

A. Well, again, they say they positively knew it. It might have been like a confirmatory, oh, yeah, that's Jimmy Diaz that's who we are talking about. So, again, there is no context to say how that happened.

Q. But you would have to ask some questions?

A. It would need to be explained.

Q. Because the report says that two of those three people --

A. Knew it was him.

Q. -- had seen his photograph in the newspaper, right?

A. Well, one says it in the report, and the other one says it in the testimony.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

199

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. So if it came to Detective McCready's attention that there had been no such photograph in the newspaper, that's inconsistent with what's reported. Right?

A. Yes.

Q. And that needs to be documented and disclosed?

A. Yes.

Q. Prior to trial?

A. Yes.

Q. And if that information came to his attention, it would undermine the corroboration he had been trying to put together of the confession?

A. They are still speaking of him being in railroad cars. It would undermine who was actually sleeping, was this the man who was sleeping in the railroad cars.

Q. Would you agree that if, if, an unduly suggestive identification procedure led them to identify Diaz, the corroboration of the confession would be undermined?

A. Mr. Diaz, if he is unknown to these people, and you are looking at a witness



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

200

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

to identify the person you have seen sleeping in the railroad cars, then there should have been a photo spread.

If it is a, oh, yeah, Jimmy Diaz, that guy, he sleeps in the car all the time, and you are confirming this is the Jimmy Diaz you are talking about, one photo wouldn't have been a problem. But it should be documented.

Q. It should be documented?

A. Yes.

Q. And there should be a fair, rather than unduly suggestive, display to any witness?

A. Again, if it is confirmatory you are not concerned so much with suggestive. You want to make sure you are talking about the same person when you are taking statements or taking --

Q. Is it your testimony that for a confirming ID, you can be as suggestive as you like?

A. If you are just trying to verify we are talking about the same person, it is not a criminal suspect, neither of these three



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

201

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

are criminal suspects, yeah, it would be all right.

Q. The concern about suggestiveness is suggesting to the witnesses who your suspect is, right?

A. Um-hum.

Q. The concern is that in displaying the suspect photograph you are telegraphing to the witness who you think, who you want them to ID, right? It doesn't matter if the witnesses are suspects.

A. Okay.

Q. You agree?

A. I suppose.

Q. That's a yes?

A. Yes. You are asking me to comment on cases --

Q. Thank you, sir. There is no question pending.

A. Okay.

MR. DUNNE: Can we get a copy of this, of 18?

MS. CORNWALL: Take this one.

Q. Take a look at Exhibit 18. At



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

202

1 J. McELHONE

2 page 501, again, McCready's testimony at the  
3 Diaz trial. At line 3:

4 "Question: That was why you went  
5 up there to place Diaz in the railroad  
6 yard?

7 "Answer: Yes.

8 "Question: So the first time  
9 could be an accident, but you showed  
10 this guy this picture?

11 "Answer: Right.

12 "Question: And you couldn't use  
13 this fellow in court?

14 "Answer: Right.

15 "Question: Because you only  
16 showed him this one picture?

17 "Answer: Right."

18 Do you see that?

19 A. Yes.

20 Q. So based on this testimony,  
21 McCready registered it was a problem for him  
22 to have shown a single photo to the witness?

23 A. Yes.

24 Q. Thank you. If you had been made  
25 aware that in a homicide case Detective



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

203

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

McCready used what he considered to be an unduly suggestive ID procedure with a witness, would you have had a concern?

A. Yes.

MR. DUNNE: And I will just note my objection to the form of that question. Obviously, the answer stands.

Q. If you had been made aware that Detective McCready failed to document what you considered to be an unduly suggestive ID procedure, would you have had a concern?

A. Yes.

Q. If you had known that Detective McCready failed to document Brady material that would undermine the corroboration of a confession, would you have had a concern?

A. Yes.

MR. DUNNE: Again, I will object to the form. The answer will obviously stand.

Q. And you are aware that this is the case that prompted Judge Namm to write to the governor to ask for an independent investigation?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

204

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

A. I thought there were a couple,  
but --

Q. This is one of them, right?

A. Yes.

Q. Let's turn back to the SIC report,  
Exhibit 12. At pages 38 to 39, the findings.  
Quote:

"The final instance of false  
testimony in the Diaz case discussed at  
the commission's public hearing  
concerned testimony by Detective James  
McCready regarding his interviews of  
three railroad workers who placed Diaz  
near the scene of the murder close to  
the day of its occurrence. In his  
police report, McCready wrote that the  
railroad workers recognized Diaz from  
pictures in the newspaper."

Do you see that?

A. Yes.

Q. And later on it says:

"In his report McCready made no  
mention of any mugshot or identification  
procedures, and at trial McCready



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

205

1 J. McELHONE

2 initially testified that the railroad  
3 workers recognized Diaz from pictures in  
4 the newspaper. However, quote-unquote,  
5 after it was demonstrated by the defense  
6 that there had not been any picture of  
7 Diaz in the newspaper at the time of the  
8 McCready interviews, McCready changed  
9 his testimony and contrary to his police  
10 report, said he actually had shown  
11 mugshots of Diaz to the railroad  
12 workers."

13 Do you see that?

14 A. Yes.

15 Q. If you had been aware that  
16 McCready engaged in this conduct, you would  
17 have been very concerned, right?

18 A. Yes.

19 MR. DUNNE: Objection to the form  
20 of the question.

21 The answer stands.

22 Q. You would have been concerned that  
23 he had testified falsely?

24 A. That there was a failure to  
25 document, obviously, and he testified



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

206

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

incorrectly, I would say.

Q. And inaccurately, right?

A. Inaccurately, incorrectly, yeah.

Q. McCready was on the force as a holdover in the homicide unit when you took over?

A. Yes.

Q. Does it cause you concern now to learn that he testified at the trial that the witnesses had ID'd Diaz from photograph in the newspaper, when in fact McCready knew that wasn't possible?

MR. DUNNE: Well, I'm going to object to that question. It assumes something that is not established for this witness, but go ahead and try to answer that question.

A. I don't know what Jim knew at the time, if it was a mistake or how he came to that conclusion to testify that way.

Q. You are assuming that he made a mistake, aren't you, sir?

A. Yes.

Q. It is hard for you to acknowledge



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

207

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

the possibility that he intentionally testified to something that wasn't true?

MR. DUNNE: I'll object to the form.

Go ahead and answer that as best you can.

A. I don't believe that would have happened, no.

Q. Why not?

A. I've never found him to be other than forthright. He could be sloppy, he could take shortcuts as I mentioned earlier, but I never knew him to outright lie to anybody.

Q. Take a look at page 41 of the SIC report finding, quote:

"The commission believes that in the Diaz trial, McCready, Dubey and Pistone all knowingly gave false testimony."

A. That was their belief.

Q. That doesn't cause you any concern?

A. Again, I didn't see this when I took over the homicide squad. I was relying



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

208

1 J. McELHONE  
2 primarily on what I was told and when I looked  
3 at it now, it does, but, again, it is their  
4 conclusion.

5 Q. When you look at it now, it does  
6 cause you concern about the possibility that  
7 McCready committed perjury, right?

8 A. Yes, if that's what their  
9 conclusion is. I don't know how they came to  
10 that conclusion.

11 Q. And likewise, reading Judge Namm's  
12 letter asking for the formation of the SIC in  
13 1985 referring to perjury in the James Diaz  
14 trial, knowing now that McCready was one of  
15 the officers who testified, doesn't that also  
16 cause you concern that McCready in fact was  
17 someone who committed perjury in a homicide  
18 case?

19 A. Again, it never came to my  
20 attention that it was a perjury situation. It  
21 was told to me that it was documentation,  
22 note-taking and a sloppy mistake.

23 Q. And that was enough for you at the  
24 time?

25 A. I had to go with the information I



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

209

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

had.

Q. And you didn't dig deeper?

A. No.

Q. But now as you sit here today so many years later and you have seen his report and you have seen portions of his testimony, you have seen Judge Namm's letter, a sitting judge accusing officers, including McCready, of perjury, and you have seen findings of the SIC that he did commit perjury, as you sit here today, are you concerned that Detective McCready committed perjury?

MR. DUNNE: Objection.

A. In this case --

MR. DUNNE: Objection to the form of the question. Go ahead.

A. In this case? I'm concerned that a very big mistake was made. Whether it was something he forgot or something he didn't note right or what the circumstances are, you know, you would have to ask him. I don't know.

Q. It is really hard for you to acknowledge the possibility that it is



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

210

1 J. McELHONE

2 anything other than a mistake, isn't it?

3 A. It is, yes.

4 Q. Given the tumult and the turmoil  
5 that the department was facing and that you,  
6 the pressure you were facing as you took over  
7 the homicide department, it would have been  
8 disastrous to acknowledge that a homicide  
9 officer had committed perjury, wouldn't it?

10 MR. DUNNE: Objection to the form  
11 of the question.

12 A. That was not my decision to make.  
13 It was --

14 Q. You didn't want to know about it  
15 if it happened?

16 A. I did not know the circumstances  
17 of what the SIC was looking to at that time --

18 Q. And you didn't want to know, did  
19 you?

20 A. And I talked to my boss who said  
21 there wasn't a problem with the staff who was  
22 there, and I went with that --

23 Q. Is that --

24 A. Had I known now I would have  
25 investigated further with Jimmy and found out



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

211

1 J. McELHONE

2 how that happened, explain to me and let me  
3 understand how that could have happened.

4 Q. Tell me how you would have  
5 investigated if you had known then what we  
6 have gone through today?

7 MR. DUNNE: Objection again to the  
8 form of that question. Go ahead.

9 A. I would try to get the testimony  
10 that you just showed me, how the SIC came to  
11 their conclusion that it was perjury and then  
12 talked to Jimmy about it.

13 Q. Anything else you would have done  
14 to investigate, looking at the underlying  
15 data, looking at the testimony and talking to  
16 him?

17 A. That would probably be as far as  
18 it went, that I would make my determination if  
19 he stayed in the homicide squad or they  
20 transferred him some place else.

21 Q. Would you take him at his word  
22 that it was a mistake if he told you it was a  
23 mistake?

24 A. By that time I would have the  
25 information you just showed me and would have



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

212

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

to dovetail what I'm reading and what he is saying.

Q. And if you found an inconsistency between the evidence before you and what a homicide detective told you, what do you do?

MR. DUNNE: Objection to the form. Go ahead.

A. At that point I would have probably had him moved to another command.

Q. Because you can't rely on the word of someone who is not telling you the truth?

A. Yes, it is too sensitive an area.

Q. Especially given the tumult at the time?

A. No, any time in homicide squad the veracity of the detectives is extremely important.

Q. And if they lie about one thing, you can't trust them any more?

A. Well, yes.

MR. DUNNE: Again, objection.

MS. CORNWALL: Let's take a quick break and then we got one more hour before you have to go.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

213

1 J. McELHONE

2 MR. DUNNE: Sure.

3 (Recess: 3:17-3:31 p.m.)

4 BY MS. CORNWALL:

5 Q. Mr. McElhone, we talked earlier  
6 about identification procedures. Do you  
7 recall that?

8 A. Yes.

9 Q. And one reason why an ID might be  
10 barred from evidence at trial is if it was  
11 elicited by means of an unduly suggestive ID  
12 procedure, right?

13 A. Yes.

14 Q. Separate and apart from unduly  
15 suggestive procedures, wasn't it true back in  
16 1985 and in the '80s, that police officers had  
17 to inform prosecutors that there had been an  
18 ID procedure?

19 A. Sure.

20 Q. And if no notice was given as  
21 early as the arraignment, you couldn't use  
22 that ID at trial?

23 A. I can't comment to the timeliness  
24 of it, but it would have to be notified, sure.

25 Q. They would have to be notified



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

214

1 J. McELHONE

2 certainly before trial, right?

3 A. Yes.

4 Q. To give the defense an  
5 opportunity --

6 A. To have the hearing.

7 Q. -- to have the Wade hearings?

8 A. Yes.

9 Q. And to explore the circumstances  
10 of the ID procedure, right?

11 A. Yes.

12 Q. And explore the methods used by  
13 police to elicit that ID, right?

14 A. Yes.

15 Q. So if police conducted an ID  
16 procedure and didn't give notice about it,  
17 that would be a problem?

18 A. Yes.

19 Q. Now, in the testimony that we  
20 reviewed before the break, notwithstanding the  
21 fact that there was no record in Detective  
22 McCready's report that he'd shown a mugshot,  
23 he was able to remember that fact by the time  
24 of trial. Right?

25 A. What was the question?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

215

1 J. McELHONE

2 Q. There was no reference to having  
3 displayed a mugshot in McCready's report,  
4 right?

5 A. There wasn't, no.

6 Q. And that's a report dated June  
7 27th of 1984, right?

8 A. Okay.

9 Q. Regarding interviews he did the  
10 day before?

11 A. Three railroad workers, yes.

12 Q. But by the time he testified at  
13 the trial --

14 MR. DUNNE: I don't see a date  
15 either.

16 Q. I don't either, but by the time he  
17 testified in the trial, in or about October of  
18 1985 when Diaz was acquitted and Namm wrote  
19 his letter --

20 A. Um-hum.

21 Q. -- McCready was able to remember  
22 that he had, in fact, shown mugshots to these  
23 witnesses. Right?

24 A. That's what the document  
25 indicates, yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

216

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. That's what his sworn testimony indicates?

A. Yes.

Q. So that's not a note-taking mistake, is it?

A. No, that's factual error.

Q. That cannot be attributed to the lack of note-taking?

A. Well, I think that might be part of it.

Q. But he was able to remember without having notes to benefit him, that he had actually shown the mugshot?

A. That's what is indicated there, yes.

Q. That's what he testified to?

A. Okay.

Q. So you can't blame the lack of notes for his failure to give notice about the ID procedure, right?

A. You can draw that conclusion.

Q. What other conclusion would you draw?

A. I was, again, the whole thing



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

217

J. McELHONE

about note-taking was what I was told was the problem when McCready was mentioned in there that had he taken adequate notes, mistakes wouldn't have been made, had he made an adequate report, mistakes wouldn't have been made and there wouldn't have been a problem. And I went with that information from the day I took over at the homicide squad.

Q. So leaving aside what you were told back then --

A. Okay.

Q. -- that there was a note-taking error, okay?

A. Um-hum.

Q. Based on what you have looked at today, McCready's report, excerpts of McCready's testimony --

A. Yes.

Q. -- findings by Judge Namm and the SIC that McCready gave false testimony?

A. Inaccurate testimony.

Q. No, their findings were that he committed perjury.

A. Well, that's their findings.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

218

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. You have seen that today, right?

MR. DUNNE: It is their findings  
as he said.

A. The findings of the SIC  
commission.

Q. You are aware of those findings  
now?

A. Today, yes, I am.

Q. Based on everything you have seen  
today, sir, this was not a note-taking  
mistake, was it?

MR. DUNNE: Object to the form of  
the question.

Go ahead and answer that as best  
you can.

A. With all the information I have in  
front of me now, no, there is other mistakes  
here, there are obvious glaring mistakes in  
his testimony.

Q. Like what?

A. He testified inaccurately and he  
corrected his testimony and that testimony  
wasn't substantiated with any kind of report  
or notes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

219

1 J. McELHONE

2 Q. And those are serious errors?

3 A. Yes.

4 Q. Serious misstatements of fact?

5 A. Yes.

6 Q. And it is important to you to  
7 characterize them as a mistake as opposed to  
8 an intentional misstatement of fact, right?

9 MR. DUNNE: I'll object to the  
10 form of the question.

11 A. That's the only conclusion I can  
12 reach at this point without exploring it  
13 further.

14 Q. What would it take for you to  
15 acknowledge the real possibility that McCready  
16 deliberately lied?

17 MR. DUNNE: Objection to the form.

18 A. It is possible. Anything is  
19 possible.

20 Q. What would it take?

21 A. But on the paperwork I'm looking  
22 at here now, and the experience I have with  
23 the detective, it is a mistake. I don't know  
24 that it would be something that he would  
25 intentionally do to mislead anybody.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

220

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. What evidence would you need to come to the conclusion that it was more than a mistake?

A. Talk to the three people involved, talk to Jim involved, and if it is a lie, it is a lie.

Q. So if any one of these three witnesses came forward, for example, and said I never told him I'd seen a photograph --

A. I have no idea who James Diaz was until McCready showed me a picture.

Q. If they said that, that might convince you he was lying?

A. Yes.

Q. If any one of these witnesses came forward and said I never told McCready I saw Diaz's picture in the newspaper, would that convince you that McCready was lying?

A. Certainly a mistake at that point.

MR. DUNNE: Objection to the form, but the answer stands.

Q. I'm sorry, the answer was?

A. Certainly a mistake at that point.

Q. Well, we are already at mistake.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

221

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

I'm asking you what more would convince you that it was worse than a mistake. Here is the question.

If any one of these three witnesses said now or then, in fact, I never stated that I saw a newspaper containing a photograph of James Diaz --

A. Again, that would be a mistake that would have to be investigated, how did that happen, Jim. Did they say I saw it in the newspaper, meaning they read the article or did they say I saw his picture, or you know, it is semantics, it gets into a whole thing there.

Q. I think we are missing one piece here. Take a look, if you would, please, at Exhibit 17 and turn to page, the last page of the exhibit, transcript page 467. Do you have it?

A. Yes.

Q. Okay. So the question is from the court:

The 26th being June 26th, 1984.

"Question: Of '84.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

222

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

"Answer: Right."

Do you see that at the top there?

A. Correct, yes.

Q. "Question: The date of your report?

"Answer: Yes.

"Question: Now on June the 26th of 1984, there was no picture in the paper, is that correct?

"Answer: To my knowledge there was no picture in the paper.

"Question: You said you checked that day?

"Answer: I checked later that day.

"Question: Are you talking about the time you are talking to these guys, after you talked to these people?

"Answer: No. There was just as far as -- no, there was never any picture until the 28th of whatever date you mentioned there."

Do you see that there?

A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

223

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

Q. So that's McCready under oath saying there was no photograph ever published of Diaz in the newspaper until after he interviewed these three people. Okay?

A. Okay.

Q. So this is the premise. That there never had been a photograph in the newspaper before he interviewed these witnesses. I'm going to ask you a question about what evidence you might need to make the conclusion that McCready lied in his report. Okay. That's going to be the question.

If one of these three witnesses came forward, now that we know that there was no photograph in the newspaper, if Schumel or Koerick says I never told Detective McCready I had seen Diaz's photo in the newspaper, would you then be able to conclude that McCready intentionally lied?

MR. DUNNE: Objection to the form.

Go ahead.

A. Again, on its face it is a mistake, it is a huge mistake.

Q. It is a huge mistake?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

224

1 J. McELHONE

2 A. It would have to be explored and  
3 investigated.

4 Q. Sir, all I'd like to know is under  
5 what circumstances, what proof would it take  
6 for you to conclude that McCready lied?

7 MR. DUNNE: Again, objection, but  
8 go ahead.

9 A. I would want a fuller  
10 investigation. People make mistakes. People  
11 are under pressure when they are testifying in  
12 court. Was he mistaken, was he thinking about  
13 another case, I don't know what the situation  
14 was. I didn't ask him about it.

15 Q. I understand that.

16 A. I didn't have any of this  
17 information until you have given it to me now.  
18 You are asking me hypothetically.

19 Q. I am.

20 A. Again, it is something that would  
21 be immediately explored by me. It would be  
22 something I would look into. I would talk to  
23 him. I would try to talk to the witnesses,  
24 try to figure out if there is some motive or  
25 other reason that he would do that that would



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

225

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

substantiate that he did it deliberately to mislead someone, but I would --

Q. Well, couldn't it be one operating theory if you were investigating this that Detective McCready's motive was to corroborate a confession?

A. That might be one of the motives.

Q. Now, if the witnesses say this report is wrong, I never said that, wouldn't that enable you to conclude that Detective McCready deliberately wrote a false report?

MR. DUNNE: I'm objecting to the form of the question.

Go ahead and answer it as best you can.

A. Again, this is why it would be important to take notes or in this case, I would take a written statement, a sworn written statement that I have now been shown a photo by Detective McCready and I know that to be James Diaz, the man who was sleeping in the railroad cars at the time. That would be a great way to go.

Q. It would have been?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

226

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

A. Yes.

Q. But he didn't take that route?

A. He didn't take notes, he didn't take a statement. He made a quick report and as we know now, it was inaccurate.

Q. How do you know it was a quick report?

A. I'm just saying it is a half a page on three different witnesses.

Q. Sir, can you give me a yes or no answer to the following question.

If Schumel or Koerick came forward under oath and said I never told Detective McCready that I saw James Diaz's photo in the newspaper, would that be enough for you to conclude that this report was intentionally false?

MR. DUNNE: Again, I will object to the question.

Go ahead and answer it as best you can.

A. Again, it would be -- I would be --

Q. With respect, sir, it is a yes or



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

227

1 J. McELHONE

2 no question.

3 MR. DUNNE: Unless he can't answer  
4 that yes or no.

5 Q. Would that be enough evidence for  
6 you?

7 A. That would be no. It would be  
8 enough to indicate that a further  
9 investigation would have to be taken.

10 Q. Tell me what evidence would you  
11 need?

12 A. Prior cases, prior complaints of  
13 this type of --

14 Q. So you'd need a demonstrated  
15 history of fabrications --

16 A. That would help substantiate  
17 something that is coming up at this point. It  
18 could very well be a mistake. I don't know.

19 Q. You really want to believe it is a  
20 mistake?

21 A. Possible.

22 MR. DUNNE: Again, this is --

23 A. I'm saying it is a possibility.

24 Q. Well, we know it is a mistake.

25 A. I've done a lot of civilian



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

228

1 J. McELHONE

2 complaints. I've done a lot --

3 Q. The question is is it an  
4 intentional fabrication?

5 A. How can I tell you that. I would  
6 need more information to say it was  
7 intentional.

8 Q. And what information would  
9 convince you that it was intentional?

10 A. I think I have answered that.

11 Q. I think you have not answered  
12 that. I'm asking you to tell me what it would  
13 take specifically.

14 A. I would have to have a  
15 preponderance of the evidence that he did it  
16 intentionally.

17 Q. And what would that evidence have  
18 to look like given what we looked at today?

19 A. It would be interviews with the  
20 people he alleges he talked to. And it would  
21 be --

22 Q. And what would they need to tell  
23 you for you to believe it --

24 A. I didn't do -- I didn't say.

25 Q. So if Schumel or Koerick comes



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

229

1 J. McELHONE

2 forward under oath and said I never said that,  
3 that would be a enough to convince you he  
4 lied?

5 A. That's a step in the process and  
6 then go back to McCready and go how did this  
7 happen, how come they are saying no and you  
8 are saying yes and you wrote the report on it.

9 Q. And if he gives you an explanation  
10 that is inconsistent with theirs, you are  
11 going to go with him, aren't you?

12 A. I don't think so. I guess I would  
13 go as far as I could with that investigation  
14 and if there was still a cloud about it, in my  
15 position as lieutenant, I can't fire him. I  
16 can initiate discipline or ask that he be  
17 transferred. It would be one of those two  
18 things.

19 Q. And if you interviewed one of  
20 these witnesses and any one of them said I  
21 never said that --

22 A. That would be definitely a start  
23 into that direction, yes.

24 Q. Is that enough of a concern for  
25 you that you would initiate transfer?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

230

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

A. It would be a concern.

Q. Enough of a concern?

A. Again, then I would talk to Jim and see if there is any other kind of logical explanation or anything I can offer up.

Q. Sir, do you believe that an officer who had fabricated a report is going to be honest with you when you have a sit-down with him?

MR. DUNNE: I'm objecting to the form of the question, it assumes things that aren't established.

But go ahead and answer that as best you can.

A. I would take it into consideration. There might be some kind of explanation.

Q. Leaving aside Detective McCready as a general matter. If you suspect an officer of lying deliberately on a report in testimony, can you rely on their word in a sit-down?

A. No, but that would be part of the investigation.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

231

1 J. McELHONE

2 Q. Like any other investigation --

3 A. Right.

4 Q. -- you need corroboration, right?

5 A. Yes.

6 Q. You need independent objective  
7 evidence?

8 A. That would be helpful. If it  
9 exists, that would be very helpful.

10 Q. And in this scenario that we are  
11 talking about now, the three railroad workers  
12 who are not even witnesses to the crime --

13 A. Independent.

14 Q. -- would be independent and  
15 objective witnesses?

16 A. Yes.

17 Q. If they told you I never said  
18 that, I can't imagine why Detective McCready  
19 would have written that down because I never  
20 said it, would that be enough for you to  
21 believe that he deliberately made it up?

22 A. Again --

23 MR. DUNNE: Objection.

24 A. -- you are taking a leap at the  
25 very end. It would be enough for me to say



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

232

1 J. McELHONE

2 this is totally inaccurate, I don't know what  
3 the motive was unless he has explained that to  
4 me or it wouldn't matter what the motive was,  
5 it is inaccurate, you can't go with that.

6 Q. Other than talking to these  
7 witnesses, what else would you do to  
8 investigate whether Detective McCready  
9 knowingly wrote a false report or knowingly  
10 testified falsely?

11 A. Again, I would look into his  
12 background and see if there were other cases  
13 like that, anything in internal affairs had  
14 any kind of complaint to that. If any of his  
15 former supervisors had a situation where he  
16 was doing something like that. That would all  
17 be -- you have to do a very complete  
18 investigation when you are talking about a  
19 person's career and talking about a  
20 person's --

21 Q. As you do when someone's liberty  
22 is at stake at homicide investigation, right?

23 A. Absolutely. Again, you have  
24 switched from an employee to a suspect. The  
25 burden of proof in those situations, a



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

233

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

reasonable cause to believe that the crime was committed and this person committed the crime. So it is a different standard of proof.

Q. You mentioned one of the things you would look at in doing a thorough investigation of whether a detective had deliberately lied in an official communication, a report or testimony, is whether there have been complaints against him in the past?

A. Yes.

Q. And one of the places you would look for that is internal affairs?

A. Yes.

Q. And if there have been similar complaints about that officer in the past, you would weigh that on the side of more likely to be lying as opposed to mistake --

A. Correct.

Q. -- when you are balancing the evidence, right?

A. Yes.

Q. So if, for example, you were investigating this scenario with this



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

234

1 J. McELHONE

2 information and trying to determine whether  
3 Detective McCready intentionally made false  
4 statements, if you found he had been alleged  
5 to have made false statements in the past,  
6 that would raise a concern for you?

7 A. Yes.

8 Q. It would weigh on the side of  
9 finding that he had lied again, right?

10 A. Yes.

11 Q. And you understood when you took  
12 over as the CO of homicide that an officer's  
13 history on the force, past complaints was  
14 critically important for your ability to know  
15 you can rely on him, right?

16 A. Yeah, his track record.

17 Q. Ms. McElhone, have you ever before  
18 been interviewed by any investigative  
19 agency -- I'm not talking about your lawyer  
20 here -- about the Tankleff case?

21 A. No.

22 Q. Did the Attorney General's office  
23 ever interview you?

24 A. No.

25 Q. Did the SIC ever interview you?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

235

J. McELHONE

A. No.

Q. You didn't testify in the Tankleff matter at any time previously to today?

A. I did not.

Q. Did you ever give a sworn statement to anyone in connection with Marty Tankleff?

A. No.

Q. Other than your counsel here, have you spoken to anybody about this lawsuit?

A. My wife.

Q. Okay.

A. That's about it. I'm retired for five years, so it is not something that I talk about.

Q. When is the last time you spoke to detective, now retired, McCready?

A. At Doyle's retirement party, about a year or two years ago.

Q. And that's after this complaint was filed, was it?

A. I don't know. I guess.

Q. Did you talk to him about the Tankleff case?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

236

J. McELHONE

A. No.

Q. Did the subject come up at the retirement party?

A. No, it was just very brief. I hadn't seen him in years. I know he is living in North Carolina or some place down south.

Q. How is he looking?

A. Not so good.

Q. Really, what's going on with him?

A. He looks a lot older, unlike me.

Q. Unlike you, spring chicken.

Was he physically well?

A. He appeared to, you know, he was at a retirement gig and having a good old time.

Q. Having a drink in his hand?

A. I don't remember that part, but --

Q. When is the last time you saw Norman Rein?

A. I don't know if he was even at Bob's. It has been quite a while since I've seen Norman.

Q. Since you retired have you spoken to him about the case?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

237

J. McELHONE

A. No.

Q. When is the last time you spoke to him?

A. I couldn't tell you honestly.

Q. And how about Robert Doyle, when is the last time you spoke to him?

A. I actually met him at the office of Mr. Dunne here.

Q. When was that?

A. When was that, last week?

Yeah.

Q. Who else was at that meeting?

A. Just Mr. Dunne, Bob Doyle and myself.

Q. How long was that meeting?

A. A couple of hours, two, three.

Q. Was there any other meeting at which you were present with Detective Rein?

A. Never with Detective Rein.

MR. DUNNE: You meant Doyle.

Q. I'm sorry, was there any other meeting where you and Mr. Doyle met either alone or with anyone else.

A. No, once before with Mr. Dunne



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

238

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

present, the day of the earthquake because we had to leave early. The fifth floor was shaking.

Q. How long was that meeting?

A. Two, three hours.

MR. DUNNE: It got cut short.

A. It had to be continued last week.

Q. And did you and Mr. Doyle both review the same documents we were referring to earlier in those meetings?

A. I don't know what Bob was reviewing. It was more of a discussion and a, you know, we were provided documents and I did most of the reading at home.

Q. And did you speak to him about the allegations in the complaint?

A. Not really.

Q. Did you speak to him about the evidence?

A. I think it was just a rehash of what his role was during the Tankleff case, what my role was, and no, just that, basically.

Q. Did you talk to him about Jimmy



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

239

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

McCready?

A. No, not really, other than it came up when we rehashed the investigation who did what and who was where, as best we can recall 20 some odd years later.

Q. How is Doyle doing?

A. Fine.

Q. In good health?

A. Good health.

Q. When you say you were rehashing the case, what does that mean?

A. Just informal discussion, you know.

Q. Of?

A. How long were you at the scene, how long was I at the scene. I really couldn't recall and actually going through the records that were provided to me to review, I didn't see myself logging in and logging out so I'm going basically on my memory which was, I was at the scene a couple of times. I think we had the scene two or three days.

Q. And you were there on the very first day?



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

240

J. McELHONE

A. Yes.

Q. What time did you get there?

A. I don't know exactly, but as soon as I was informed I was on my way. Marty was no longer there. Doyle was. I met him in front of the scene and I was getting a briefing from him right there. I would say 8:30 in the morning, something like that.

Q. How long were you at the scene?

A. Several hours that day. I think I went back the following day for a couple of hours.

Q. Now, we spent quite a bit of time talking about the Diaz case and the allegations about Detective McCready.

A. Um-hum.

Q. Would you agree with that assessment?

A. Yes.

Q. You testified earlier that you went with what you were told by Deputy Inspector Murphy with respect to the holdover detectives, including McCready?

A. Yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

241

1 J. McELHONE

2 Q. Why did you just go with what you  
3 were told?

4 A. I had no other evidence to think  
5 otherwise.

6 Q. Now that you have seen some other  
7 evidence, do you, would you reconsider that  
8 decision if you had it to do again?

9 MR. DUNNE: I'm objecting to the  
10 form of the question.

11 Go ahead.

12 A. It would be worth more, it would  
13 be more in the discussion phase that I had  
14 with him, you know, how did that happen and  
15 particularly the ID procedure that you said,  
16 would certainly be a glaring example of why  
17 you can't just go out there on your own and  
18 why you have to make sure it is accurate.

19 Q. Well, you have to make sure that  
20 all of your documentation is accurate?

21 A. Right.

22 Q. People are relying on it.

23 A. Yeah, absolutely.

24 Q. Based on what you have seen today  
25 just in the last couple of hours, are you



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

242

1 J. McELHONE

2 concerned that all you heard was that there  
3 was a note-taking problem but nothing more?

4 MR. DUNNE: Objection to the form  
5 of the question. Go ahead.

6 A. I'm surprised it wasn't an  
7 internal affairs case or there wasn't some  
8 type of further inquiry to determine was there  
9 a perjurious act or was this a mistake. I  
10 don't know why that wasn't undertaken by  
11 either the department or the District Attorney  
12 or somebody else but aside from that --

13 Q. Aside from whether the department  
14 undertook to investigate, my question is  
15 whether, knowing what you know now and having  
16 looked at some additional data from the Diaz  
17 case, does it in retrospect concern you that  
18 all Deputy Inspector Murphy told you was  
19 McCready had a problem with note-taking but  
20 that's it?

21 A. I don't even know if --

22 MR. DUNNE: Object to the form of  
23 the question.

24 Go ahead.

25 A. I had had heard that that was the



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

243

1 J. McELHONE

2 problem. I'm not sure if that was from  
3 Murphy. I just got from him that, no, there  
4 is nothing outstanding you had to worry about  
5 with any of the people there. The people that  
6 had to leave are gone, the people you have now  
7 are okay, but that will be up to you to  
8 determine down the line. So that's what I  
9 went with.

10 Q. And if that is all that Deputy  
11 Inspector Murphy told you, given what you know  
12 now, does that concern you?

13 A. Yeah, maybe he didn't have all of  
14 the details at that point, or, you know, he  
15 had already made a conclusion that it was a  
16 mistake and not a problem.

17 Q. Did you ask him if he  
18 investigated?

19 A. I did not.

20 Q. So who were the detectives who had  
21 to go?

22 A. I couldn't tell you. Before I got  
23 there apparently they were gone.

24 Q. Rafferty was one of them?

25 A. I would say, yes.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

244

1 J. McELHONE

2 Q. Cassidy?

3 A. I guess.

4 Q. Who were two of the officers who  
5 elicited the confession in the Diaz case?

6 A. Yes.

7 Q. That was at issue in Namm's letter  
8 and the SIC investigation, right?

9 A. Yes.

10 Q. Anyone else?

11 A. I can't comment. I don't know.

12 Q. You have no idea?

13 A. No.

14 Q. As it turns out there were some  
15 loose ends with regard to at least Detective  
16 McCready, right?

17 MR. DUNNE: Object to the form.

18 Is that a question or statement?

19 A. From what you are showing me now,  
20 there was more information that I didn't have.

21 Q. That you should have known?

22 A. It would have been nice to have.

23 Q. If you had known then what you  
24 learned today from reviewing McCready's report  
25 and testimony in the Diaz case, fair to say



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

245

1 J. McELHONE

2 you would have not simply relied on his word  
3 when reporting about his investigative  
4 tactics?

5 MR. DUNNE: Again, objection to  
6 the form of the question for the third  
7 time, but go ahead, you can answer that.

8 A. I would have in our discussion  
9 early on in my tenure, I would have had a much  
10 more in-depth discussion with him to find out  
11 what was going on there.

12 Q. And what would that discussion  
13 have looked like?

14 A. How did that happen, you know, how  
15 could that be that you would make an egregious  
16 error like that and while under oath on trial.  
17 I would have to find out what he had to say.

18 Q. And what answer would convince you  
19 that there was nothing more to worry about?

20 A. I don't know.

21 Q. What answer would convince you  
22 there is more investigation to be done?

23 A. If I had doubt at that point, I  
24 would have just moved out and transferred and  
25 forwarded onto maybe internal affairs or



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

246

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

wherever else it would have to go after that.

Q. But if he gives you a good explanation and looks you in the eye, would that be good enough for you?

A. No, it had to be a little bit more than that.

Q. Like what?

A. Something that would make sense, that would be a little bit logical, that he was confused with another case, that -- I don't know what it would be.

Q. If you are coming to someone to investigate whether or not they lied in a police report or in testimony, how can you rely on their word in a meeting about their intent by definition?

MR. DUNNE: Object to the form.  
Go ahead.

A. There would have to be a good explanation. We are in hypothetical land here as I keep saying. But I would give him the benefit of an explanation. That's what I'm trying to say. You don't just get an accusation and come down -- they have an



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

247

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

J. McELHONE

expression in internal affairs: The facts before the axe. You know, to just have somebody make a complaint and then fire the cop, until you investigate it, until you get, you know, some kind of corroboration, substantiation, something like that.

Q. And the same would apply for a homicide investigation, right? You want the facts before the axe?

A. You definitely have to have the facts to establish reasonable cause that a crime has been committed and this person has committed the crime.

Q. And you want to keep an open mind until all the facts are in?

A. Certainly.

MS. CORNWALL: Let's just go off the record for one minute.

(Recess: 4:02-4:05 p.m.)

MS. CORNWALL: We will conclude questioning for the day at this point, reserving the balance of our court ordered 14 hours for additional sessions to be scheduled.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com



John McElhone

December 2, 2011

248

J. McELHONE

MR. DUNNE: Sure. And we will  
work it out.

(Time noted: 4:06 p.m.)

(Total on-the-record time: 4 hrs.  
10 mins.)

---

JOHN McELHONE

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2010.



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

249

C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, ANNELIESE R. TURSI, a  
Registered Professional Reporter and Notary  
Public within and for the State of New York,  
do hereby certify:

That the witness whose deposition  
is hereinbefore set forth, was duly sworn by  
me and that such deposition is a true record  
of the testimony given by the witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have  
hereunto set my hand this \_\_\_\_ day of  
\_\_\_\_\_, 2011.

\_\_\_\_\_  
ANNELIESE R. TURSI, RPR



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

250

DEPOSITION ERRATA SHEET

Esquire Deposition Assignment No. 324226

Case Caption: Tankleff v. Suffolk County

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
JOHN McELHONE



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

251

DEPOSITION ERRATA SHEET

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

JOHN MCELHONE



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

252

DEPOSITION ERRATA SHEET

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

JOHN MCELHONE



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
www.esquiresolutions.com

John McElhone

December 2, 2011

253

December 2, 2011

I N D E X

EXAM BY	PAGE
Ms. Cornwall	4

E X H I B I T S

FOR IDENTIFICATION	PAGE
Plaintiff Exhibit 7, document reflecting resume of John McElhone	4
Plaintiff Exhibit 8, organizational chart	23
Plaintiff Exhibit 9, letter from Judge Stuart Namm to Governor Cuomo	91
Plaintiff Exhibit 10, Resolution of the State of New York Commission of Investigation authorizing an investigation into the Suffolk County Police Department and others, adopted as of January 9th of '86	92
Plaintiff Exhibit 11, copy of The Confession Takers newspaper story	95
Plaintiff Exhibit 12, 1989 SIC report	121
Plaintiff Exhibit 13, January 29th, 1987 article from The New York Times entitled Suffolk Police Are Described As Deficient	145
Plaintiff Exhibit 14, February 2, 1987 New York Times article entitled Long Island Trial is Scrutinized Two Years After Verdict	170



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

John McElhone

December 2, 2011

254

E X H I B I T S

FOR IDENTIFICATION PAGE

Plaintiff Exhibit 15, Diaz  
confession 184

Plaintiff Exhibit 16, supplementary  
report from investigation dated  
June 27, 1984 186

Plaintiff Exhibit 17, excerpt of  
Detective McCready's testimony from  
the Diaz trial 191

Plaintiff Exhibit 18, additional  
excerpt of Detective McCready's  
testimony from the Diaz trial,  
pages 500 to 502 195

REQUESTS FOR PRODUCTION

PAGE LINE

35 5  
36 13

INFORMATION TO BE PROVIDED

PAGE LINE

27 9



ESQUIRE

Toll Free: 800.944.9454  
Facsimile: 212.557.5972

Suite 4715  
One Penn Plaza  
New York, NY 10119  
[www.esquiresolutions.com](http://www.esquiresolutions.com)